



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

RULES AND REGULATIONS

Effective January 21, 2014

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TITLE 22. EXAMINING BOARDS
PART 5. STATE BOARD OF DENTAL EXAMINERS
CHAPTER 100. GENERAL PROVISIONS

§100.1. Introduction.

(a) Name. The State Board of Dental Examiners, referred to as the "board," is a decision-making board appointed by the governor of the State of Texas in compliance with Chapter 252 of the Occupations Code, and the Texas Constitution.

(b) Location. The administrative offices shall be located in Austin, Texas.

(c) Legal authority. The board is established pursuant to Occupations Code, Chapter 252.

(d) Composition. The board shall be composed of those persons appointed by the Governor with the advice and consent of the senate.

(e) Fiscal year. For all fiscal and administrative purposes, the reporting year of the board shall be identical to that of the State of Texas.

The provisions of this §100.1 adopted to be effective February 20, 2005, 30 TexReg 715.

§100.2. Purpose and Functions.

(a) Purpose. The purpose of the board is to safeguard the health and safety of Texans by developing and maintaining programs to:

(1) Ensure that only qualified persons are licensed to provide dental care; and

(2) Ensure that violators of law and rules regulating dentistry are appropriately sanctioned.

(b) Functions. The board shall perform the following functions, as outlined in Occupations Code, Chapter 254:

(1) Establish standards of dental practice and regulate the practice of dentistry;

(2) Interpret and enforce the Dental Practice Act and other statutes relating to the practice of dentistry, and implement the Act's intent through the promulgation and enforcement of rules, as necessary to protect the public health and safety;

(3) Receive complaints and investigate possible violations of the Dental Practice Act, other statutes relating to the practice of dentistry, and board rules;

(4) Discipline licensees for violations of the Dental Practice Act, other statutes relating to the practice of dentistry, and board rules through appropriate legal action;

(5) Investigate infection control in the dental profession and adopt and enforce rules to control the spread of infection in the practice of dentistry as necessary to protect the public health and safety;

(6) Adopt and enforce rules placing reasonable restrictions on advertising relating to the practice of dentistry;

(7) Adopt rules to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment;

The provisions of this §100.2 adopted to be effective February 20, 2005, 30 TexReg 715.

§100.3. Organization and Structure.

(a) General. The board shall consist of 15 members appointed by the governor with the advice and consent of the senate, as follows:

(1) eight reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) two reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and,

(3) five members who represent the public.

(b) Privileges of office. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

(c) Terms of office. Members of the board serve staggered six-year terms. The terms of one-third of the members shall expire on February 1 of each odd-numbered year. A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

(d) Eligibility. Refer to Occupations Code §252.002.

(e) Membership and employee restrictions. Refer to Occupations Code §252.003.

(f) Compensation. Each member of the board is entitled to receive a per diem set by legislative appropriation for each day the member engages in board business, and may receive reimbursement for travel expenses in accordance with the travel policies of the state of Texas and the Board of Dental Examiners.

(g) Professional Conduct. A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(2) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(3) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(4) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

The provisions of this §100.3 adopted to be effective February 20, 2005, 30 TexReg 715; amended to be effective December 24, 2007, 32 TexReg 9627; amended to be effective March 5, 2009, 34 TexReg 1432; amended to be effective February 2, 2010, 35 TexReg 629; amended to be effective December 10, 2013, 38 TexReg 8828.

§100.4. Officers.

(a) Presiding officer.

(1) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

(2) The presiding officer must be a dentist.

(3) The presiding officer shall:

(A) Preside over all meetings of the board;
(B) Represent the board in legislative matters and in meetings with related groups;

(C) Appoint standing, ad hoc, and advisory committees;

(D) Perform other such duties as pertain to the position of presiding officer; and,

(E) Designate a member of the board to coordinate the annual performance reviews of the executive director and evaluation of the agency.

(b) Secretary. The board shall elect a secretary from its members to serve for a one-year term.

The provisions of this §100.4 adopted to be effective February 20, 2005, 30 TexReg 715.

§100.5. Meetings.

(a) Frequency and location. The board shall hold meetings at least twice a year at times and places the board determines.

(b) Agenda. An agenda for each meeting shall be posted in accordance with the Open Meetings Act and copies shall be sent to each member of the board, Dental Hygiene Advisory Council, and Dental Laboratory Certification Council.

(c) Quorum. A majority of the members of the board shall constitute a quorum for the transaction of all business at any regular or special meeting.

(d) Voting. The board may act only by majority vote of its members present and voting, with each member entitled to one vote, unless a conflict of interest exists.

(e) Presiding officer. In the absence of the appointed presiding officer, the secretary shall act as presiding officer. In the absence of both the appointed presiding officer and the secretary, an acting presiding

officer shall be chosen by a majority of the board members present, to preside over that meeting only.

(f) Parliamentary procedure. Board and committee meetings shall be conducted pursuant to the protocols contained in Robert's Rules of Order Newly Revised.

(g) Minutes. Minutes of all board meetings shall be prepared and supplied to board members for their review at or prior to the next subsequent board meeting, and shall be filed with the Legislative Reference Library and the Texas State Library within 45 days of board approval of the minutes.

The provisions of this §100.5 adopted to be effective February 20, 2005, 30 TexReg 715.

§100.10. Executive Director.

(a) The Board may determine qualifications for and retain an Executive Director who shall be the chief executive officer of the agency.

(b) The Executive Director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the Board. As chief executive of the agency, the Executive Director shall manage all aspects of the agency, including personnel, financial and other resources, in support of the Dental Practice Act, Board rules and policies, the Board's mission and strategic plan.

(c) The Executive Director shall attend all meetings of the Board and may offer recommendations to the Board, but shall not vote on matters brought before the Board.

(d) The Executive Director, with the Board's consent, may employ an Assistant Executive Director to perform the Executive Director's duties when the Executive Director is absent or unable to act.

(e) The Executive Director is authorized to accept the voluntary surrender of a license. Board ratification is not required. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

The provisions of this §100.10 adopted to be effective February 20, 2005, 30 TexReg 715; amended to be effective September 14, 2010, 35 TexReg 8341.

§100.20. Final Board Decisions in Contested Cases.

(a) The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act.

(b) The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations.

(c) Sanctions should be consistent with sanctions imposed in similar cases and should reflect the board's determination of the seriousness of the violation and the

sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law.

(d) This section shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

The provisions of this §100.20 adopted to be effective February 20, 2005, 30 TexReg 715.

CHAPTER 101. DENTAL LICENSURE

§101.1. General Qualifications for Licensure.

(a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

- (1) Is at least 21 years of age;
- (2) Is of good moral character and professional fitness, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license in any jurisdiction, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;
- (3) Has successfully completed a current course in basic life support;
- (4) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;
- (5) Has paid all application, examination and licensing fees required by the Dental Practice Act and Board rules; and
- (6) Has submitted fingerprints for the retrieval of criminal history record information.

(d) In conjunction with the application, the applicant must provide any information requested by the Board pursuant to §254.019(b) of the Dental Practice Act.

(e) Applications for licensure must be delivered to the office of the Board.

(f) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant with an explanation of additional documentation or information needed.

(g) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

The provisions of this §101.1 adopted to be effective January 1, 1976; amended to be effective February 6, 1977, 2 TexReg 248; amended to be effective March 9, 1984, 9 TexReg 1216; amended to be effective September 6, 1991, 16 TexReg 4619; amended to be effective February 20, 1992, 17 TexReg 1089; amended to be effective December 24, 1992, 17 TexReg 8729; amended to be effective April 21, 1993, 18

TexReg 2300; amended to be effective June 2, 1993, 18 TexReg 3277; amended to be effective December 14, 1993, 18 TexReg 8901; amended to be effective December 3, 1997, 22 TexReg 11672; amended to be effective May 10, 2004, 29 TexReg 4473; amended to be effective October 7, 2009, 34 TexReg 6849; amended to be effective December 22, 2010, 35 TexReg 11253; amended to be effective May 29, 2013, 38 TexReg 3344; amended to be effective August 25, 2013, 38 TexReg 5261.

§101.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by examination who is a graduate of an accredited school must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations; and

(3) Has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board.

(b) In addition to the general qualifications for licensure contained in §101.1 of this chapter, an applicant for licensure by examination who is a graduate of a non-accredited school must present proof that the applicant:

(1) Has graduated from a dental school that is not CODA-accredited;

(2) Has successfully completed training in an American Dental Association-approved specialty in a CODA-accredited education program that consists of at least two years of training as specified by the Council on Dental Education;

(3) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations; and

(4) Has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board. Many regional examining boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the Board.

(c) Licensure by specialty examination. Applicants for licensure by specialty examination must present proof that the applicant:

(1) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(2) Has taken and passed a specialty examination administered by a regional examining board designated by the Board. Many regional examining boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the Board; and

(3) Has either:

(A) successfully completed training in an American Dental Association-approved specialty in a CODA-accredited education program that consists of at least two years of training as specified by the Council on Dental Education; or

(B) been currently or previously certified as a "Board Candidate" or "Diplomate" by an American Dental Association-approved specialty board.

(d) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) Northeast Regional Board, January 1, 2005;

(D) Southern Regional Testing Agency, January 1, 2005; and

(E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

(e) Remediation.

(1) If an applicant for Texas dental licensure fails three general dentistry clinical examination attempts, the applicant must complete 80 hours of clinical remediation through a CODA-accredited dental school before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more general dentistry clinical examination attempts, the applicant must complete one of the following before approval will be issued to take another clinical examination:

(A) the repetition of the final year of a graduate dental program from a CODA-accredited dental school; or

(B) a clinical remediation course offered by a CODA-accredited dental school, consisting of no less than 1,000 clinical hours.

(3) All programs of clinical remediation require prior approval by the Board. Applicants will be responsible for locating, identifying and obtaining approval from the Board prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the Board approves a remediation program for the applicant.

The provisions of this §101.2 adopted to be effective May 10, 2004, 29 TexReg 4473; amended to be effective February 20, 2005, 30 TexReg 715; amended to be effective October 7, 2009, 34 TexReg 6849; amended to be effective December 22, 2010, 35 TexReg 11253; amended to be effective May 29, 2013, 38 TexReg 3344.

§101.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(3) Has practiced dentistry:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(4) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(6) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank

and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) Practice experience described in subsection (a)(3) of this section must be subsequent to applicant having graduated from a CODA-accredited dental school.

The provisions of this §101.3 adopted to be effective May 10, 2004, 29 TexReg 4473; amended to be effective October 7, 2009, 34 TexReg 6849; amended to be effective May 19, 2010, 35 TexReg 3814; amended to be effective December 22, 2010, 35 TexReg 11253; amended to be effective May 29, 2013, 38 TexReg 3344.

§101.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(3) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(4) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank

and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. For applications filed after August 31, 2002, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification;

(6) Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) A license granted under this section is valid only for practice as an employee of the non-profit corporation named on the application.

(c) A dentist holding a temporary license issued under this section may renew the license by submitting an annual application and paying all required fees.

(d) A dentist holding a temporary license may obtain a license under the provision of §101.3 of this chapter (relating to Licensure by Credentials) when the dentist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §101.3 of this chapter and the application fee charged under this section.

The provisions of this §101.4 adopted to be effective May 10, 2004, 29 TexReg 4473; amended to be effective May 19, 2010, 35 TexReg 3814; amended to be effective December 22, 2010, 35 TexReg 11253; amended to be effective May 29, 2013, 38 TexReg 3344.

§101.5. Staggered Dental Registrations.

(a) The Board, pursuant to the Occupations Code, Chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental license registration periods followed by annual registrations (i.e., renewals).

(b) The initial, staggered dental license registration periods will range from 6 months to 17 months. The length of the initial license registration period will be according to the licensee's birth month.

(c) Prior to the expiration date of the initial dental license registration period, a license renewal notice will be mailed to all dental licensees who have that expiration date.

(d) A license registration expired for one year or more may not be renewed.

(e) An initial license expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

(f) In conjunction with the license renewal, the licensee must provide any information requested by the Board pursuant to §254.019(b) of the Dental Practice Act.

The provisions of this §101.5 adopted to be effective May 10, 2004, 29 TexReg 4473; amended to be effective February 2, 2010, 35 TexReg 629; amended to be effective May 29, 2013, 38 TexReg 3344; amended to be effective August 25, 2013, 38 TexReg 5261.

§101.6. Dental Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) Definitions.

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(3) "Military Veteran" means a person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) Military Service Members and Military Veterans. The Board shall give credit to an applicant who is a Military service member or Military veteran for any verified military service, training, or education toward the licensing requirements, other than an examination requirement, including, but not limited to, education, training, certification, or a course in basic life support. The Board may not give credit if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) or §101.8 of this title (relating to Persons with Criminal Backgrounds).

(c) Military Spouses.

(1) The Board shall process an application from a Military spouse as soon as practicable after receiving such application.

(2) The Board shall issue a license to a qualified Military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state. The initial license has the term established by §101.5 of this title (relating to Staggered Dental Registrations), or a term of 12

months from the date the license is issued, whichever term is longer.

(3) The Board shall notify in writing or by electronic means an individual granted a license under paragraph (2) of this subsection of the requirements for renewal.

(4) The Board may allow a Military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived outside of this state for at least six months, to demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the Board. For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a dental license.

(5) In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the Executive Director.

(d) All applicants shall submit an application and proof of any relevant requirements on a form and in a manner prescribed by the Board.

(e) All applicants shall submit the applicable required fee(s).

(f) All applicants shall submit fingerprints for the retrieval of criminal history record information.

(g) A licensee is exempt from any penalty imposed by the Board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the Board that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside the state of Texas.

(h) A licensee who is a member of the state military forces or a reserve component of the armed forces of the United States and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete:

- (1) any continuing education requirements; and
- (2) any other requirement related to the renewal of the person's license.

The provisions of this §101.6 adopted to be effective December 10, 2013, 38 TexReg 8828.

§101.7. Retired License Status.

(a) Application.

(1) A holder of a valid and current Texas dental license may apply to the Board to have the license placed on retired status.

(2) A licensee must apply to the Board for retired status, on a form prescribed by the Board, before the expiration date of the person's Texas license.

(3) The Board shall deny a request to place a license on retired status if there are any current or pending complaints or disciplinary actions against the license holder.

(b) Reinstatement. The Board may reinstate a retired Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) A license holder who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, or had practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(C) proof of successful completion of a current course in basic life support;

(D) proof of completion of 24 hours of continuing education, of which a minimum of 12 hours must be clinical (hands-on). All hours must have been taken within the 12 months preceding the date the application is received by the Board and shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title; and

(E) proof of submission of fingerprints for the retrieval of criminal history record information.

(3) A license holder who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) A license holder who applies to reenter active practice must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time retired status was granted.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

(c) Practice in volunteer charity care.

(1) A dentist holding a retired status Texas dental license under this section may practice dentistry if the practice consists solely of volunteer charity care.

(A) For the purposes of this subsection, "volunteer charity care" is defined as the direct provision of dental services to indigent or critical need populations within the state of Texas, without compensation.

(B) A dentist providing services under this subsection may not receive any remuneration for such services.

(C) A dentist may not, without approval from Board staff, provide services under this subsection if he or she was subject to disciplinary action in any jurisdiction in the 3 years immediately preceding the license's entry into retired status.

(2) Application process. A dentist must make written request to the Board, on a form prescribed by the Board, prior to offering services under this subsection.

(A) The report shall include a sworn affirmation by the dentist that the dentist meets the qualifications of this subsection.

(B) Upon approval by Board staff, a letter of authorization shall be issued to the dentist.

(i) The letter of authorization, unless revoked by the Board, shall expire at the end of the calendar year in which it was issued.

(ii) Provision of dental services after the expiration of the letter of authorization shall constitute the practice of dentistry without a license.

(iii) It shall be the responsibility of the dentist to maintain current authorization to provide services under this subsection, by making proper request as required by this subsection.

(3) Scope of practice.

(A) A dentist providing services under this subsection may not prescribe or administer controlled substances under Drug Enforcement Administration (DEA) Schedules I or II.

(B) A dentist providing services under this subsection must post, or be able to produce on demand of a patient, a current letter of authorization from the Board.

(4) A dentist practicing under this subsection must complete 6 hours of the annual continuing education requirement for licensees under Chapter 104 of this title.

(5) A dentist providing services under this subsection shall execute a written agreement with the facility where services are offered to retain right of access to all dental records resulting from the provision of such services.

The provisions of this §101.7 adopted to be effective February 23, 2006, 31 TexReg 1033; amended to be effective November 5, 2006, 31 TexReg 8832; amended to be effective October 7, 2009, 34 TexReg 6850; amended to be effective May 29, 2013, 38 TexReg 3344.

§101.8. Persons with Criminal Backgrounds.

(a) The purpose of this section is to establish guidelines and criteria for the disciplinary actions to be taken by the Board against applicants, licensees or registrants with criminal backgrounds.

(b) The Board shall suspend a license or registration upon an initial conviction and revoke upon a final conviction for:

(1) a felony;

(2) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(3) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(4) a misdemeanor under Section 25.07, Penal Code; or

(5) a misdemeanor under Section 25.071, Penal Code.

(c) The Board shall suspend a license or registration upon an initial finding of guilt by a trier of

fact and revoke upon a final conviction for a felony under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

(d) The Board may not reinstate or reissue a license or registration suspended or revoked under subsection (b) or (c) of this section, unless an express determination is made that the reinstatement or reissuance of the license or registration is in the best interests of the public and the person whose license or registration was suspended or revoked.

(e) The Board shall revoke a license or registration upon the imprisonment of the licensee or registrant following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole or mandatory supervision.

(f) The Board may impose any authorized disciplinary action on an applicant, licensee or registrant because of a person's conviction of a crime, other than a Class C misdemeanor, that:

(1) serves as a ground for discipline under the Act;

(2) directly relates to the duties and responsibilities of a licensee or registrant;

(3) does not directly relate to the duties and responsibilities of a licensee or registrant and that was committed within the previous five years;

(4) is listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(5) is a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(g) The crimes listed in paragraphs (1) - (8) of this subsection are directly related to the duties and responsibilities of a licensee or registrant because, as established by the Legislature in the Dental Practice Act, the offenses are of a serious nature; have a relationship to the purposes for requiring a license; may offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; or have a relationship to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee or registrant:

(1) a felony offense;

(2) a misdemeanor offense involving fraud;

(3) an offense relating to the regulation of dentists, dental hygienists or dental assistants;

(4) an offense relating to the regulation of a plan to provide, arrange for, or reimburse any part of the cost of dental care services or the regulation of the business of insurance;

(5) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(6) a misdemeanor under Section 25.07, Penal Code;

(7) a misdemeanor under Section 25.071, Penal Code; and

(8) an offense that was committed in the practice of or connected to dentistry, dental hygiene or dental assistance.

(h) In determining the appropriate disciplinary action to take where the Board is not mandated to take a certain disciplinary action, the Board may consider the following factors listed in paragraphs (1) - (6) of this subsection:

(1) the extent and nature of the person's criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity, indicating that the person has maintained steady employment, supported the person's dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution;

(5) evidence of the person's rehabilitation or rehabilitative effort; and

(6) other evidence of the person's fitness including letters of recommendation.

(i) A person is considered to have been convicted of an offense for purposes of subsection (f) of this section if the person entered a plea of guilty or nolo contendere and the judge deferred further proceedings without entering an adjudication of guilt and placed the person under supervision, whether or not the court has dismissed the proceedings and discharged the person.

(j) An applicant, licensee or registrant shall disclose in writing to the Board any arrest, conviction or deferred adjudication against him or her at the time of initial application and renewal. Additionally, an applicant, licensee or registrant shall provide information regarding any arrest, conviction or deferred adjudication to the Board within 30 days of a Board request. An application shall be deemed withdrawn if the applicant has failed to respond to a request for information or to a proposal for denial of eligibility or conditional eligibility within 30 days.

The provisions of this §101.8 adopted to be effective March 7, 2013, 38 TexReg 1361; amended to be effective December 10, 2013, 38 TexReg 8830.

§101.9. Criminal History Evaluation Letter.

(a) A person enrolled or planning to enroll in an educational program that prepares the person for initial

licensure as a dentist and who has reason to believe that he or she may be ineligible for licensure due to a conviction or deferred adjudication for a felony or a misdemeanor offense, may petition the Board for a Criminal History Evaluation Letter.

(b) The requestor must submit a petition that includes:

(1) a statement by the requestor indicating the reason(s) and basis of potential ineligibility;

(2) any applicable court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation;

(3) any other documentation requested by the Board; and

(4) the required fee.

(c) An investigation of the requestor's eligibility may be conducted.

(d) If the Board determines that a ground for ineligibility does not exist, it shall notify the requestor in writing of the Board's determination on each ground of potential ineligibility.

(e) If the Board determines that the requestor is ineligible for a license, it shall issue a letter setting out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Board shall provide notice under subsection (d) of this section or issue a letter under subsection (e) of this section no later than the ninetieth (90th) day after the date the Board receives the request.

(g) The Board shall charge a person requesting an evaluation a fee not to exceed \$100 to cover the cost of administering this section. The fee shall be non-refundable.

The provisions of this §101.9 adopted to be effective May 19, 2010, 35 TexReg 3814; amended to be effective May 29, 2013, 38 TexReg 3344.

§101.10. Temporary License for Charitable Purpose.

(a) In this section, "voluntary charity care" has the meaning assigned by §101.7(c)(1)(A) of this chapter (relating to Retired License Status).

(b) The Board shall grant a temporary license for a dentist who presents proof that the applicant:

(1) Has not been the subject of a final disciplinary action and is not the subject of a pending disciplinary action in any jurisdiction in which the dentist is or has been licensed;

(2) Has graduated and received either the "DDS" or "DMD" degree from a dental school

accredited by the Commission on Dental Accreditation of the American Dental Association;

(3) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations; and

(4) Either one of the following:

(A) Is currently licensed in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board; or

(B) Was previously licensed in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board, not more than two years before the date the dentist applies for a license under this section and was licensed in good standing at the time the dentist ceased practicing dentistry.

(c) As part of the application, the applicant shall disclose:

(1) A description of the charity care to be given;

(2) The name, location and contact information of the sponsoring charitable entity;

(3) The specific location and date of the charity care to be provided;

(4) The procedure for continued dental care for patients in compliance with §108.5 of this title (relating to Patient Abandonment);

(5) The procedure for emergency care for patients and reporting to the Board in compliance with §108.6 of this title (relating to Report of Patient Death or Injury Requiring Hospitalization);

(6) The procedure for maintenance of patient records in compliance with §108.8 of this title (relating to Records of the Dentist); and

(7) Any other relevant information regarding the charity care to be given as requested by the Board.

(d) A dentist issued a license under this section shall:

(1) confine the dentist's practice to voluntary charity care;

(2) practice only in a geographic area specified by the license; and

(3) practice only for the period specified by the license.

(e) A dentist issued a license under this section shall maintain the license where the charitable services are provided.

(f) A dentist issued a license under this section shall not administer any form of anesthesia, other than

local, without obtaining the proper permit from the Board.

(g) The Board shall take disciplinary action against a dentist licensed under this section for a violation of this section or Board rules in the same manner as against a dentist licensed under Texas Occupations Code, Chapter 256, Subchapter A.

The provisions of this §101.10 adopted to be effective August 25, 2013, 38 TexReg 5261.

CHAPTER 102. FEES

§102.1. Fee Schedule. The Board has established the

following reasonable and necessary fees for the administration of its functions:

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg – HB 3201	Total Fee
DENTIST							
Application by Exam	\$215.00	\$200.00	\$0.00	\$0.00	\$5.00	\$55.00	\$475.00
Annual Renewal	\$150.00	\$200.00	\$10.00	\$9.00	\$1.00	\$55.00	\$425.00
Annual Renewal – Late 1 to 90 days	\$225.00	\$200.00	\$10.00	\$9.00	\$1.00	\$55.00	\$500.00
Annual Renewal – Late 90 to 365 days	\$300.00	\$200.00	\$10.00	\$9.00	\$1.00	\$55.00	\$575.00
Licensure by Credentials	\$2,800.00					\$55.00	\$2,855.00
Temporary Licensure by Credentials	\$750.00						\$750.00
Faculty Initial Application	\$115.00				\$5.00		\$120.00
Faculty Annual Renewal	\$95.00		\$10.00	\$9.00	\$1.00		\$115.00
Faculty Annual Renewal – Late 1 to 90 days	\$142.50		\$10.00	\$9.00	\$1.00		\$162.50
Faculty Annual Renewal – Late 90 to 365 days	\$190.00		\$10.00	\$9.00	\$1.00		\$210.00
Conversion Fee – Faculty to Full Privilege	\$50.00						\$50.00
Nitrous Oxide and Level 1 Anesthesia Application	\$32.00						\$32.00
Nitrous Oxide and Level 1 Anesthesia Annual Renewal	\$10.00						\$10.00
Level 2 thru Level 4 Anesthesia Application	\$60.00						\$60.00
Level 2 thru Level 4 Anesthesia Annual Renewal	\$10.00						\$10.00
Portability of Anesthesia Level 3 thru Level 4 Application	\$120.00						\$120.00
Application to Reactivate a Retired License	\$75.00						\$75.00
Duplicate License / Renewal	\$25.00						\$25.00
Conversion Fee – Full Privilege to Faculty	\$50.00						\$50.00
Conversion Fee – Temporary Licensure by Credentials to Full	\$2,050.00					\$55.00	\$2,105.00
DENTAL HYGIENIST							
Application by Exam	\$115.00				\$5.00		\$120.00
Annual Renewal	\$100.00		\$6.00	\$2.00	\$1.00		\$109.00
Annual Renewal – Late 1 to 90 days	\$150.00		\$6.00	\$2.00	\$1.00		\$159.00
Annual Renewal – Late 90 to 365 days	\$200.00		\$6.00	\$2.00	\$1.00		\$209.00
Licensure by Credentials	\$630.00						\$630.00
Temporary Licensure by Credentials	\$220.00						\$220.00
Faculty Initial Application	\$115.00				\$5.00		\$120.00
Faculty Annual Renewal	\$83.00		\$6.00	\$2.00	\$1.00		\$92.00
Faculty Annual Renewal – Late 1 to 90 days	\$124.50		\$6.00	\$2.00	\$1.00		\$133.50
Faculty Annual Renewal – Late 90 to 365 days	\$166.00		\$6.00	\$2.00	\$1.00		\$175.00
Conversion Fee – Faculty to Full Privilege	\$50.00						\$50.00

	Professional Board Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
Application to Reactivate a Retired License	\$75.00					\$75.00
Duplicate License / Renewal	\$25.00					\$25.00
Nitrous Oxide Cons Sed Monitoring Application	\$12.00					\$12.00
Nitrous Oxide Monitoring Duplicate Certificate	\$10.00					\$10.00
Conversion Fee - Full Privilege to Faculty	\$50.00					\$50.00
Conversion Fee - Temporary Licensure by Credentials to Full	\$410.00					\$410.00
DENTAL ASSISTANT						
Initial Application	\$31.00			\$5.00		\$36.00
Annual Renewal	\$29.00	\$2.00		\$1.00		\$32.00
Annual Renewal - Late 1 to 90 days	\$43.50	\$2.00		\$1.00		\$46.50
Annual Renewal - Late 90 to 365 days	\$58.00	\$2.00		\$1.00		\$61.00
Duplicate License / Renewal	\$25.00					\$25.00
Pit and Fissure Sealant Application	\$30.00					\$30.00
Pit and Fissure Sealant Renewal	\$18.00					\$18.00
Duplicate Pit Fissure Certificate	\$15.00					\$15.00
Nitrous Oxide Cons Sed Monitoring Application	\$12.00					\$12.00
Nitrous Oxide Monitoring Duplicate Certificate	\$10.00					\$10.00
Coronal Polishing Application	\$12.00					\$12.00
Duplicate Coronal Polishing Certificate	\$10.00					\$10.00
DENTAL LABORATORIES						
Application	\$120.00			\$5.00		\$125.00
Annual Renewal	\$131.00	\$3.00		\$1.00		\$135.00
Annual Renewal - Late 1 to 90 days	\$196.50	\$3.00		\$1.00		\$200.50
Annual Renewal - Late 90 to 365 days	\$262.00	\$3.00		\$1.00		\$266.00
Duplicate Certificate	\$25.00					\$25.00
OTHER						
Mobile Application	\$120.00					\$120.00
Annual Mobile Renewal	\$60.00					\$60.00
Duplicate Certificate Mobile Certificate	\$15.00					\$15.00
Dentist Intern / Resident Prescription Privileges	\$50.00					\$50.00
Dental Assistant Course Provider	\$100.00					\$100.00
Jurisprudence	\$55.00					\$55.00
Licensure Verification without Seal	\$4.00					\$4.00

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
Licensure Verification with Seal	\$9.00						\$9.00
Criminal History Letter	\$25.00						\$25.00
Printed Copy - Rules and Regulations	\$20.00						\$20.00
Printed Copy - TX Occupations Code - Dental Practice Act	\$15.00						\$15.00
Printed Consumer Signage	\$5.00						\$5.00
Board Scores	\$10.00						\$10.00

The provisions of this §102.1 adopted to be effective May 26, 2005, 30 TexReg 3017; amended to be effective November 27, 2005, 30 TexReg 7742; amended to be effective October 7, 2009, 34 TexReg 6851; amended to be effective August 25, 2013, 38 TexReg 5261; amended to be effective December 10, 2013, 38 TexReg 8830.

§102.2. Open Records Requests.

(a) Open records requests. The following rules apply to requests for records under the Public Information Act, Government Code, Chapter 552.

(1) Requests must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the agency.

(4) Unless confidential information is involved, review may be by physical access or by duplication at the requestor's option. However, any person whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided the option of receiving copies. Costs of duplication shall be the responsibility of the requesting party in accordance with the established fees and shall be payable at the time of receipt of records if in person or in advance if by mail.

(5) When the safety of any public record is at issue, physical access may be denied and the records will be provided by duplication as previously described.

(6) All open records request appointments will be referred to the Legal Division before complying with a request.

(b) Charges for copies of public records. In accordance with Government Code, Chapter 552, the following specifies the charges the State Board of Dental Examiners will make for copies of public records. These charges are based on the full cost to the agency for providing the copies.

(1) Definitions. The following words and terms, when used in this section, shall have the

following meaning, unless the context clearly indicates otherwise.

(A) Actual cost--The sum of all direct costs plus a proportional share of overhead or indirect costs.

(B) Board/agency--State Board of Dental Examiners.

(C) Nonstandard copy--A copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskette, magnetic tape, CD-ROM, are examples of nonstandard copies. Paper copies larger than 8 1/2 x 14 inches (legal size) also are considered nonstandard copies.

(D) Standard paper copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 x 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.

(2) Charges.

(A) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has a printed image is considered a page.

(B) Nonstandard copy. These charges are to cover the cost of materials onto which information is copied and do not reflect any additional charge that may be associated with a particular request. The charges for nonstandard copies are:

(i) diskette--\$1.00;

(ii) tape cartridge--\$11.50;

(iii) oversize paper copy--\$.50 per page;

(iv) audio cassette--\$1.00.

(C) Programming personnel. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that the requested information may be accessed and copied, the agency will charge for the actual cost of the programmer's time.

(D) Other personnel charge. The charge for other personnel costs incurred in processing a request for public information is \$15 an hour, including fringe benefits. Where applicable, the "other personnel charge" may include the actual time to locate, compile, and reproduce the requested information. An "other personnel charge" shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records for standard copies reproduced by means of a office machine copier or a computer printer.

(E) When confidential information is mixed with public information in the same page, personnel time may be recovered for time spent to obliterate, blackout, or otherwise obscure confidential information in order to release the public information.

(F) Overhead charge. Whenever any personnel charge is applicable to a request, the agency will include in the charges direct and indirect costs in addition to the specific personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. This overhead charge is 20% of any personnel charges associated with a request. An overhead charge will not be made for requests of 50 pages or fewer of standard paper records.

(G) Microfiche copies. The charge is \$.10 per page for standard size paper copies plus any applicable personnel and overhead charge for more than 50 copies.

(H) Computer resource charge. The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources. Such a charge might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities. The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. If programming is required to comply with a particular request, the cost of the programmer's time will be recovered.

(I) Postal and shipping charges. The agency will add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(J) FAX charges. The charge for a fax transmitted locally is \$.10 per page; for long distance transmission the charge will be \$.50 for a fax sent within the sender's area code and \$1.00 per page for a fax transmitted to a different area code.

(K) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested

information, will be added to the total charge for public information.

(c) If a particular request may involve considerable time and resources to process, the agency may advise the requesting party of what may be involved and provide an estimate of date of completion and the charges that may result.

(d) Payment for charges must be received by the State Board of Dental Examiners from requester before copies will be released.

(e) A deposit may be required in the amount of the estimated charges if such charges are expected to exceed \$100.

(f) The agency has the discretion to furnish public records without charge or at a reduced charge if the agency determines that a waiver or reduction is in the public interest.

(g) If the agency cannot produce the public information for inspection or duplication within ten calendar days after the date the agency received the request, the agency shall certify that fact in writing to the requester and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(h) The agency may set the price for publications it publishes for public dissemination or it may disseminate them free of charge. This rule does not limit the costs of agency publications.

(i) Public information requested by a member of the Texas Legislature in the performance of the member's duties shall be provided without charge.

The provisions of this §102.2 adopted to be effective December 3, 1997, 22 TexReg 11674.

CHAPTER 103. DENTAL HYGIENE LICENSURE

§103.1. General Qualifications for Licensure.

(a) Any person desiring to practice dental hygiene in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

(1) Is at least 18 years of age;

(2) Is of good moral character and professional fitness, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;

(3) Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);

(4) Has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) with a degree in dentistry or a degree or certificate in dental hygiene, or has graduated from a CODA-accredited school or college of dental hygiene with a degree in dental hygiene;

(5) Has taken and passed the examination for dental hygienists given by the American Dental Association Joint Commission on National Dental Examinations;

(6) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds);

(7) Has successfully completed a current course in basic life support;

(8) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year prior to application;

(9) Has paid all application, examination and licensing fees required by the Dental Practice Act and Board rules; and

(10) Has submitted fingerprints for the retrieval of criminal history record information.

(d) Applications for licensure must be delivered to the office of the Board.

(e) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant with an explanation of additional documentation or information needed.

(f) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

The provisions of this §103.1 adopted to be effective January 1, 1976; amended to be effective March 9, 1984, 9 TexReg 1217; amended to be effective February 20, 1992, 17 TexReg 1090; amended to be effective December 24, 1992, 17 TexReg 8730; amended to be effective December 14, 1993, 18 TexReg 8901; amended to be effective December 3, 1997, 22 TexReg 11674; amended to be effective September 21, 2004, 29 TexReg 9003; amended to be effective February 20, 2005, 30 TexReg 716; amended to be effective October 7, 2009, 34 TexReg 6851; amended to be effective December 22, 2010, 35 TexReg 11254; amended to be effective May 29, 2013, 38 TexReg 3345.

§103.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed the appropriate clinical examination administered by a regional examining board designated by the Board.

(b) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) Northeast Regional Board, January 1, 2005;

(D) Southern Regional Testing Agency, January 1, 2005; and

(E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

(c) Remediation.

(1) If an applicant for Texas dental hygienist licensure fails three dental hygiene clinical examination attempts, the applicant must complete 40 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more dental hygiene clinical examination attempts, the applicant must complete 150 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another clinical examination.

(3) All programs of clinical remediation require prior approval by the Board. Applicants will be responsible for locating, identifying and obtaining approval from the Board prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the Board approves a remediation program for the applicant.

The provisions of this §103.2 adopted to be effective September 21, 2004, 29 TexReg 9003; amended to be effective February 20, 2005, 30 TexReg 716; amended to be effective December 22, 2010, 35 TexReg 11254; amended to be effective May 29, 2013, 38 TexReg 3345.

§103.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by credentials must present proof that the applicant:

(1) Is currently licensed as a dentist or dental hygienist in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board;

(2) Has practiced dentistry or dental hygiene:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(3) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(4) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. Additionally, an applicant shall make application with the Professional Background Information Services

(PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.

(b) Practice experience described in subsection (a)(2) of this section must be subsequent to applicant having graduated from a CODA-accredited dental or dental hygiene school.

The provisions of this §103.3 adopted to be effective September 21, 2004, 29 TexReg 9003; amended to be effective October 7, 2009, 34 TexReg 6851; amended to be effective May 19, 2010, 35 TexReg 3814; amended to be effective May 29, 2013, 38 TexReg 3345.

§103.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary dental hygienist licensure by credentials must present proof that the applicant:

(1) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board;

(2) Is endorsed by the state board of dentistry that has jurisdiction over the current practice. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(3) Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement;

(4) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.

(b) A license granted under this section is valid only for practice as an employee of the non-profit corporation named on the application.

(c) A dental hygienist holding a temporary license issued under this section may renew the license by submitting an annual renewal application and paying all required fees.

(d) A dental hygienist holding a temporary license may obtain a license under the provisions of §103.3 of this chapter (relating to Licensure by Credentials) when the dental hygienist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §103.3 of this chapter and the application fee charged under this section.

The provisions of this §103.4 adopted to be effective September 21, 2004, 29 TexReg 9003; amended to be effective May 19, 2010, 35 TexReg 3814; amended to be effective May 29, 2013, 38 TexReg 3345.

§103.5. Staggered Dental Hygiene Registrations.

(a) The Board, pursuant to Occupations Code, Chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental hygiene license registration periods followed by annual registrations (i.e., renewals).

(b) The initial dental hygiene license registration periods will range from 6 months to 17 months. The length of the initial license registration period will be according to the licensee's birth month.

(c) Prior to the expiration date of the initial dental hygiene license registration period, a license renewal notice will be mailed to all dental hygiene licensees who have that expiration date.

(d) A license registration expired for one year or more may not be renewed.

(e) An initial license expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before the expiration date.

The provisions of this §103.5 adopted to be effective September 21, 2004, 29 TexReg 9003; amended to be effective September 14, 2010, 35 TexReg 8342; amended to be effective May 29, 2013, 38 TexReg 3345.

§103.6. Dental Hygienist Licensing for Military Service Members, Military Veterans, and Military Spouses. The Board may issue a license to a dental hygienist applicant who is a Military service member, Military veteran, or Military spouse in compliance with §101.6 of this title (relating to Dental Licensing for Military

Service Members, Military Veterans, and Military Spouses).

The provisions of this §103.6 adopted to be effective June 10, 2012, 37 TexReg 4042; amended to be effective May 29, 2013, 38 TexReg 3345; amended to be effective December 10, 2013, 38 TexReg 8830.

§103.7. Retired License Status.

(a) Application.

(1) A holder of a valid and current Texas dental hygiene license may apply to the Board to have the license placed on retired status.

(2) A licensee must apply to the Board for retired status, on a form prescribed by the Board, before the expiration date of the person's Texas license.

(3) The Board shall deny a request to place a license on retired status if there are any current or pending complaints or disciplinary actions against the license holder.

(b) Reinstatement. The Board may reinstate a retired Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) A license holder who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, or had practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(C) proof of successful completion of a current course in basic life support;

(D) proof of completion of 24 hours of continuing education, of which a minimum of 12 hours must be clinical (hands-on). All hours must have been taken within the 12 months preceding the date the application is received by the Board and shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title; and

(E) proof of submission of fingerprints for the retrieval of criminal history record information.

(3) A license holder who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) A license holder who applies to reenter active practice must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time retired status was granted.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

The provisions of this §103.7 adopted to be effective February 23, 2006, 31 TexReg 1034; amended to be effective February 24, 2008, 33 TexReg 1546; amended to be effective October 7, 2009, 34 TexReg 6852; amended to be effective May 29, 2013, 38 TexReg 3345.

§103.8. Criminal History Evaluation Letter.

(a) A person enrolled or planning to enroll in an educational program that prepares the person for initial licensure as a dental hygienist and who has reason to believe that he or she may be ineligible for licensure due to a conviction or deferred adjudication for a felony or a misdemeanor offense, may petition the Board for a Criminal History Evaluation Letter.

(b) The requestor must submit a petition that includes:

(1) a statement by the requestor indicating the reason(s) and basis of potential ineligibility;

(2) any applicable court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation;

(3) any other documentation requested by the Board; and

(4) the required fee.

(c) An investigation of the requestor's eligibility may be conducted.

(d) If the Board determines that a ground for ineligibility does not exist, it shall notify the requestor in writing of the Board's determination on each ground of potential ineligibility.

(e) If the Board determines that the requestor is ineligible for a license, it shall issue a letter setting out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Board shall provide notice under subsection (d) of this section or issue a letter under subsection (e) of this section no later than the ninetieth (90th) day after the date the Board receives the request.

(g) The Board shall charge a person requesting an evaluation a fee not to exceed \$100 to cover the cost of administering this section. The fee shall be non-refundable.

The provisions of this §103.8 adopted to be effective May 19, 2010, 35 TexReg 3814; amended to be effective May 29, 2013, 38 TexReg 3345.

CHAPTER 104. CONTINUING EDUCATION

§104.1. Requirement. As a prerequisite to the annual renewal of a dental or dental hygiene license, proof of completion of 12 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the annual period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2008, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 8 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Up to 4 hours of coursework may be in risk-management courses. Acceptable "risk

management" courses include courses in risk management, record-keeping, and ethics.

(C) Up to 6 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title (relating to Providers). Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(D) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 12-hour requirement.

(E) Hours of coursework in practice finance may not be considered in the 12-hour requirement.

(3) Each licensee shall complete either the jurisprudence assessment every three (3) years. This requirement is in addition to the twelve (12) hours of continuing education required annually for the renewal of a license.

(4) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 12-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the three years immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(5) Examiners for the Western Regional Examining Board (WREB) will be allowed credit for no more than 6 hours annually, obtained from WREB's calibration and standardization exercise.

(6) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(7) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(8) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 6 hours of continuing education credit annually to apply towards the annual renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in

writing and based upon a reasonable assessment of the time required to complete the task.

The provisions of this §104.1 adopted to be effective March 1, 1996, 21 TexReg 1422; amended to be effective April 19, 1998, 23 TexReg 3830; amended to be effective June 28, 1998, 23 TexReg 6440; amended to be effective November 30, 1999, 24 TexReg 10539; amended to be effective April 16, 2000, 25 TexReg 3250; amended to be effective July 1, 2002, 27 TexReg 5782; amended to be effective September 21, 2004, 29 TexReg 9004; amended to be effective February 25, 2007, 32 TexReg 627; amended to be effective December 24, 2007, 32 TexReg 9628; amended to be effective August 7, 2008, 33 TexReg 6132; amended to be effective February 2, 2010, 35 TexReg 630.

§104.2. Providers. Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are certified by the following providers:

- (1) American Dental Association--Continuing Education Recognition Program (CERP);
- (2) American Dental Association, its component, and its constituent organizations;
- (3) Academy of General Dentistry, and its constituents and approved sponsors;
- (4) Dental/dental hygiene schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association;
- (5) American Dental Association approved specialty organizations;
- (6) American Dental Hygienists' Association, its component, and its constituent organizations;
- (7) American Medical Association approved specialty organizations;
- (8) American Medical Association approved hospital courses;
- (9) National Dental Association, its constituent, and its component societies;
- (10) National Dental Hygienists' Association, its constituent, and its component societies;
- (11) Medical schools and programs accredited by the Standards of the Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification or the American Osteopathic Association;
- (12) Western Regional Examining Board;
- (13) American Academy of Dental Hygiene;
- (14) American Dental Education Association;
- (15) American Heart Association;
- (16) Texas Dental Hygiene Educators' Association;
- (17) Dental Laboratory Association of Texas;
- (18) Dental Assisting National Board;

(19) American Dental Assistants Association and its constituent organizations;

(20) The Compliance Division, LLC;

(21) Dental Compliance Specialists, LLC; and

(22) Other entities approved by the Board.

The provisions of this §104.2 adopted to be effective March 1, 1996, 21 TexReg 1422; amended to be effective April 17, 2001, 26 TexReg 2833; amended to be effective September 15, 2002, 27 TexReg 8768; amended to be effective February 23, 2006, 31 TexReg 1035; amended to be effective February 2, 2010, 35 TexReg 630.

§104.4. Penalties.

(a) Each licensee and registrant shall attest during the annual renewal process that he/she is in compliance with the statutory requirements for continuing education.

(b) Falsification of a continuing education attestation is a violation of the Dental Practice Act and such false certification or the failure to attend and complete the required number of continuing education hours shall subject the licensee/registrant to disciplinary action.

(c) If it appears that the licensee/registrant has falsified the attestation, that matter will be referred to the Director of Enforcement of the State Board of Dental Examiners for proceeding as set forth in §107.100 of this title, §107.101 of this title and the Dental Practice Act.

The provisions of this §104.4 adopted to be effective March 1, 1996, 21 TexReg 1422; amended to be effective June 28, 1998, 23 TexReg 6440; amended to be effective April 16, 2000, 25 TexReg 3250; amended to be effective February 2, 2010, 35 TexReg 630.

§104.5. Auditable Documentation.

(a) Each licensee shall maintain in his/her possession auditable documentation of continuing education hours completed for a minimum of three years.

(b) Documentation shall confirm completion as evidenced by certificates of attendance, contact hours certificates, academic transcripts, gradeslips, or other documents furnished by the course provider.

(c) Documentation shall include records of courses taken, the dates and locations and number of hours for such courses, or course notes or materials.

(d) Copies of documentation shall be submitted to the State Board of Dental Examiners upon audit.

The provisions of this §104.5 adopted to be effective March 1, 1996, 21 TexReg 1422; amended to be effective April 16, 2000, 25 TexReg 3250.

§104.6. Audits. All licensees are subject to audit by the State Board of Dental Examiners for purposes of ensuring compliance with the continuing education requirements as outlined in this chapter (Continuing Education).

The provisions of this §104.6 adopted to be effective July 1, 2002, 27 TexReg 5783.

CHAPTER 107. DENTAL BOARD PROCEDURES
SUBCHAPTER A. PROCEDURES GOVERNING
GRIEVANCES, HEARINGS, AND APPEALS

§107.1. Application. These rules apply to all contested cases within the Board's jurisdiction and shall control practice and procedure before the Board and the State Office of Administrative Hearings (SOAH) unless preempted by rules promulgated by SOAH or the Administrative Procedures Act.

The provisions of this §107.1 adopted to be effective November 30, 1999, 24 TexReg 10540.

§107.2. Effect of Child Support Payment Default on Licensure Status, Application, and Renewal.

(a) "License" means a license, certificate, registration, permit, or other authorization issued by the Board.

(b) Effect of Child Support Payment Default on Licensure Status

(1) The licensure status of a licensee is subject to the course of action established by the Texas Family Code, §232.011.

(2) On receipt of a final order suspending a license issued by the Board to an individual, the Board shall immediately record the suspension of the licensee in the Board's records.

(3) The Board shall implement the terms of the final order suspending license without additional review or hearing. The Board may provide notice as appropriate to the license holder.

(4) The Board may not modify, remand, reverse, vacate, or stay an order suspending license and may not review, vacate, or reconsider the terms of a final order suspending license.

(5) An individual who is the subject of a final order suspending license is not entitled to a refund for any fee or paid to the Board.

(6) An individual who continues to engage in the practice of dentistry or any licensed activity after the implementation of the order suspending license by the Board is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of the Board.

(7) The Board is exempt from liability to a license holder for any act authorized under Family Code, Chapter 232 performed by the Board.

(8) Except as provided by Family Code, Chapter 232, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of the Board to grant, deny, suspend, revoke, terminate, or renew a license otherwise.

(9) An order issued under this chapter to suspend a license applies to each license issued by the licensing authority subject to the order for which the obligor is eligible. The licensing authority may not

issue or renew any other license for the obligor until an order vacating or staying an order suspending license is rendered.

(c) Effect of Child Support Payment Default on Licensure Application and Renewal

(1) Initial applications and applications for renewal of licenses issued by the board are subject to the course of action established by the Texas Family Code, §232.0135.

(2) Upon notice from another agency that an obligor has failed to pay child support for six months or more, the Board shall refuse to grant initial licensure or renewal of an existing license to an obligor until the Board is notified by the other agency that the obligor has:

(A) paid all child support arrearages;

(B) made an immediate payment of not less than \$200 toward child support arrearages owed and established with the other agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the obligor's earnings and child support payments; or

(D) successfully contested the denial before the child support agency in accordance with Texas Family Code, §232.0135(d).

(d) The Board may charge a fee to a licensee who is the subject of an order suspending license or of an action of another agency under Texas Family Code, §232.0135 to deny issuance or renewal of license in an amount sufficient to recover the administrative costs incurred by the Board.

The provisions of this §107.2 adopted to be effective December 16, 2012, 37 TexReg 9635; amended to be effective December 10, 2013, 38 TexReg 8830.

§107.3. Effect of Student Loan Payment Default on Licensure.

(a) Definitions.

(1) Administering entity--a governmental entity that administers a student loan, student loan repayment, or scholarship program.

(2) Corporation--the Texas Guaranteed Student Loan Corporation (TGS LC).

(3) License--A license, certificate, registration, permit, or other authorization issued by the Board.

(4) Student loan--A loan made to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment that is:

(A) owed to this state, an agency of this state, or the United States; or

(B) guaranteed by this state, an agency of this state, or the United States.

(b) Discretion to Renew, Approve or Discipline a License.

(1) The Board may deny a person's initial application for licensure; deny an application for renewal of license issued by the Board; suspend the license; or take other disciplinary action against the person upon receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract as established by §56.003 of the Texas Occupations Code.

(2) A determination by an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract creates a rebuttable presumption that the person has committed the default or breach.

(3) The Board may rescind any action taken under section (b)(1) on the receipt of information from an administering entity that the person against whom the action was taken has:

(A) entered into an agreement with the administering entity to:

(i) repay the student loan;
(ii) perform the service obligation;
(iii) pay any damages required by the student loan repayment contract or scholarship contract;
or

(B) taken other action resulting in the person no longer being in default on the student loan or in breach of the student loan repayment contract or scholarship contract.

(4) The Board may reinstate any action taken under section (b)(1) and may take other disciplinary action on the receipt of information from an administering entity that the person against whom the action was taken has:

(A) defaulted on or breached an agreement under section (b)(3)(A); or

(B) otherwise defaulted on the student loan or breached the student loan repayment or scholarship contract.

(c) Mandatory Non-Renewal of a License.

(1) The Board shall not renew a license due to a default on a student loan guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC), a default on a repayment agreement with TGSLC or a failure to enter a repayment agreement with TGSLC as established under §57.491 of the Texas Education Code, unless the licensee presents to the Board a certificate issued by the corporation certifying that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(2) The Board shall provide its applicants and licensees with written notice of the nonrenewal policies established under §57.491 of the Texas Education Code and an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, §2001.001, et seq.

(3) As required by §57.491(c) of the Texas Education Code, the Board, on an annual basis, shall prepare a list of the agency's licensees and submit the list to the corporation in hard copy or electronic form.

The provisions of this §107.3 adopted to be effective December 10, 2013, 38 TexReg 8831.

§107.11. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--The Dental Practice Act (DPA), Texas Occupations Code Annotated §§251.001 et seq.

(2) Address of Record--A licensee's mailing address as provided to the State Board of Dental Examiners pursuant to state law and Board rule.

(3) Administrative Law Judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Administrative Procedure Act (APA)--Texas Government Code, Chapter 2001 as amended.

(5) Agency--The Texas State Board of Dental Examiners, also known as the State Board of Dental Examiners, and, for brevity, the Dental Board or the Board.

(6) Answer--A responsive pleading.

(7) Applicant or petitioner--A party seeking a license, registration, or certificate from the agency.

(8) Board member--One of the appointed members of the decision making body defined as the agency.

(9) Certificate--Any annual renewal authority or permit.

(10) Complaint--Written accusation made by any person, or by the Board on its own initiative, alleging that a licensee's conduct may have violated the DPA or the Board's rules.

(11) Contested case--A proceeding, including licensing, in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.

(12) Default Order--A Board Order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely

Answer to a Formal Complaint or to appear at a properly noticed SOAH hearing.

(13) Default Proceeding--The issuance of a Proposal for Decision in which the factual allegations against the Respondent in a contested case are deemed admitted as true upon the Respondent's failure to appear at a properly noticed hearing or failure to file an Answer to the Formal Complaint.

(14) Executive Director--The Executive Director of the Texas State Board of Dental Examiners.

(15) Formal Complaint--Pleading by Board staff publically alleging a violation of the Act, Board rules, or Board Order.

(16) License--Includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(17) Licensing--Includes the agency process relating to the granting, denial, renewal, revocation, cancellation, suspension, annulment, withdrawal, limitation, or amendment of a license.

(18) Officer--Any board member elected to an office of the Texas State Board of Dental Examiners.

(19) Party--Each person named or admitted as a party.

(20) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(21) Petitioner--A party, including the Board who brings a request or action and assumes the burden of going forward with an administrative proceeding; e.g., the Board in an action to discipline a licensee; the person who seeks a determination of eligibility for licensure.

(22) Proposal for Decision--A statement prepared by the individual who conducted the administrative hearing that provides the findings of fact and conclusions of law necessary for the proposed decision.

(23) Register--The Texas Register.

(24) Registration--The required annual renewal of any previously issued permit or authority.

(25) Respondent--A party, including the Board, to whom a request is made or against whom an action is brought, e.g., the licensee in a disciplinary action by the Board; the Board in an action to determine eligibility for licensure.

(26) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes substantive regulations.

(27) State Office of Administrative Hearings (SOAH)--A state agency created to serve as an independent forum for the conduct of adjudicative hearings in the executive branch of state government.

The provisions of this §107.11 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10540; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.12. Object of Rules.

(a) The purpose of these rules is to provide for a simple and efficient system of procedure before the agency, to insure uniform standards of practice and procedure, public participation in and notice of agency actions, and a fair and expeditious determination of causes. These rules shall be liberally construed, with a view towards the purpose for which they were adopted.

(b) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of agency proceedings:

(1) the agency gives notice by personal service or by registered or certified mail to license holder of facts or conduct alleged to warrant the intended action; and

(2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

The provisions of this §107.12 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10541.

§107.13. Scope of Rules. These rules shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the agency. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the agency or the substantive rights of any person.

The provisions of this §107.13 adopted to be effective January 1, 1976.

§107.14. Filing of Documents. All applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the agency shall be filed with the executive director or other designated person. They shall be deemed filed only when actually received by him accompanied by the filing fee, if any, required by statute or agency rules.

The provisions of this §107.14 adopted to be effective January 1, 1976.

§107.15. Computation of Time.

(a) Counting Days. Unless otherwise required by statute, in computing time periods prescribed by this chapter or by a State Office of Administrative Hearings

(SOAH) order, the period shall begin to run on the day after the act, event, or default in question. The day of the act, event, or default on which the designated period of time begins to run is not included in the computation. The period shall conclude on the last day of the designated period, unless that day is a day the agency is not open for business, in which case the designated period runs until the end of the next day on which the agency is open for business. When this chapter specifies a deadline or a set number of days for filing documents or taking other actions, the computation of time shall be calendar days rather than business days, unless otherwise provided in this chapter or pursuant to an order by an administrative law judge or Board Order. However, if the period to act is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted.

(b) Extension. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties, order of the Executive Director or order of the administrative law judge (if SOAH has acquired jurisdiction), upon written request filed prior to the expiration of the applicable time period. The written request must show good cause for an extension of time and state that the need is not caused by the neglect, indifference, or lack of diligence of the movant.

The provisions of this §107.15 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10541; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.16. Agreement To Be in Writing. No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the agency shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify or stipulate any right or privilege afforded by these rules, unless precluded by law.

The provisions of this §107.16 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10541.

§107.17. Service in Non-rulemaking Proceedings.

(a) Notification of Decisions and Orders. When the agency is required to provide service of notice to any party of a decision or order, the agency shall notify the party either personally or by first class mail. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or the licensee's attorney of record.

(b) Notification of Notice of Hearing. Notification of a Notice of Hearing shall be made to a licensee by

hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or addressed to the party's attorney of record. Notice of Hearing in a contested case must comply with Texas Government Code §2001.052. Service is complete when made pursuant to 1 TAC §155.103 (SOAH).

The provisions of this §107.17 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10542; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.18. Conduct and Decorum. Parties, representatives and other participants shall conduct themselves with dignity and shall show courtesy and respect for one another and the agency, including members of the board and staff. Attorneys shall adhere to the standards of conduct in the Texas Lawyer's Creed promulgated by the Texas Supreme Court.

The provisions of this §107.18 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10542.

§107.19. Denial of a License. If an applicant's original application for license or registration or a licensee's/registrant's request for renewal of a license or registration is denied, he/she shall have 20 days from the date of denial to make a written request for a hearing. If so requested, the hearing will be granted and the provisions of the Administrative Procedure Act and this chapter with regard to a contested case shall apply. If the hearing is not requested within the 20 days, the denial is final.

The provisions of this §107.19 adopted to be effective September 30, 2012, 37 TexReg 7484.

§107.20. Persons Interested in Proceedings. Any person may appear in any proceeding before the agency. Appearances may be disallowed upon a showing that the person has no justiciable or administratively cognizable interest in the proceeding. The board shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

The provisions of this §107.20 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10542.

§107.21. Appearances Personally or by Representative. A respondent may appear and be represented by the respondent's attorney of record who is authorized to practice law in the State of Texas. This right may be expressly waived. Any respondent may appear on his own behalf. A dental laboratory as defined by Chapter

266 of the Texas Occupations Code shall be represented by the owner of record or by the attorney of record of the owner of record.

The provisions of this §107.21 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10543; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.22. Pleading.

(a) In disciplinary matters, the Board's pleading shall be styled "Formal Complaint." Except in cases of temporary suspension, a Formal Complaint shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the Administrative Procedure Act (APA), Texas Government Code §2001.054(c).

(b) In non-disciplinary matters, the Board's pleading shall be styled "Petition of the State Board of Dental Examiners."

The provisions of this §107.22 adopted to be effective September 14, 2010, 35 TexReg 8342.

§107.23. Commencement of Formal Disciplinary Proceedings.

(a) If the Board has probable cause to believe that a violation of statute or Board rule occurred, Board staff may commence formal disciplinary proceedings by filing a public Formal Complaint against the Respondent.

(b) The Formal Complaint shall contain the following information:

(1) the name of the Respondent and his or her license, registration, or certificate number;

(2) a statement alleging with reasonable certainty the specific act or acts relied on by the Board to constitute a violation of a specific statute, Board rule, or Board Order; and

(3) a reference to the section of the Texas Occupations Code and the Board's rules which the Respondent is alleged to have violated.

(c) When a Formal Complaint is filed, the Executive Director shall serve the Respondent with a copy of the Formal Complaint. The Notice accompanying the Formal Complaint shall state that Respondent shall file a written answer to the Formal Complaint that meets the requirements of §107.24 of this title.

(d) Board staff may amend the Formal Complaint at any time permitted by the APA. A copy of any Amendment to the Formal Complaint shall be served on the Respondent. The first complaint filed shall be entitled "Formal Complaint," the first amended

complaint filed shall be entitled "First Amended Formal Complaint," and so forth.

(e) The Formal Complaint may be resolved by agreement of the parties at any time.

The provisions of this §107.23 adopted to be effective September 14, 2010, 35 TexReg 8342.

§107.24. Respondent's Answer in a Disciplinary Matter.

(a) The Respondent in a disciplinary matter shall file an Answer to the Formal Complaint and to any Amendment to the Formal Complaint.

(b) The Answer shall admit or deny each of the allegations in the Formal Complaint or Amendment.

(c) If the Respondent fails to file an Answer to the Formal Complaint within twenty days of the date of service, the matter shall be considered a default case.

(d) In a case of default, the Respondent will be deemed to have

(1) admitted all the factual allegations in the Formal Complaint;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the Formal Complaint; and

(4) waived objection to the recommended sanction in the Formal Complaint.

(e) If the Respondent fails to file a written Answer within the time period prescribed by these rules, the Executive Director may recommend that the Board enter a Default Order, based upon the allegations set out in the Formal Complaint, which adopts the sanction that was recommended in the Formal Complaint or evidence presented at the hearing.

(f) Upon consideration of the case, the Board may:

(1) enter a default order under §2001.056 of the APA; or

(2) order the matter to be set for a hearing at SOAH.

(g) The Respondent may amend his or her Answer at any time permitted by the APA or SOAH rules.

(h) The first answer filed shall be entitled "Answer," the first amended answer filed shall be entitled "First Amended Answer," and so forth.

(i) Any default judgment granted under this section will be entered on the basis of the factual allegations in the Formal Complaint contained in the Notice, and upon proof of proper notice to the Respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §2001.054 and §107.17 of this title. Such notice shall also include the following language in capital letters in 12 point boldface type: FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL COMPLAINT, EITHER PERSONALLY OR BY LEGAL REPRESENTATIVE, WILL RESULT IN

THE ALLEGATIONS CONTAINED IN THE FORMAL COMPLAINT BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

(j) A Motion for Rehearing which requests that the Board vacate its Default Order under this section shall be granted if the movant proves by the preponderance of the evidence that the failure to answer the Formal Complaint was not intentional or the result of conscious indifference, but due to accident or mistake--provided that the movant has a meritorious defense to the factual allegations contained in the Formal Complaint and vacating the Default Order will occasion no delay or otherwise work an injury to the Board.

The provisions of this §107.24 adopted to be effective September 14, 2010, 35 TexReg 8342; amended to be effective September 30, 2012, 37 TexReg 7484.

§107.25. Formal Proceedings.

(a) Formal administrative hearings in contested cases shall be conducted in accordance with the APA, SOAH rules, the Texas Occupations Code, and Board rules. SOAH acquires jurisdiction over the case when the Board staff files a Request to Docket Case Form accompanied by legible copies of all pertinent documents including, but not limited to, the Formal Complaint, petition, application, or other document describing the agency action giving rise to a contested case.

(b) When a case has been docketed before SOAH, Board staff shall provide a Notice of Hearing to all parties in accordance with §2001.052, Texas Government Code, and applicable SOAH rules.

(c) In disciplinary cases, the Respondent shall enter an appearance by filing a written Answer or other responsive pleading with SOAH and provide a copy to Board staff, within twenty (20) days of the date on which the Notice of Hearing is served to the Respondent. For purposes of this section, an entry of an appearance shall mean the filing of a written Answer or other responsive pleading.

(d) The failure of the Respondent to timely enter an appearance as provided in this section shall entitle the Board staff to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the ALJ.

(e) The Notice of Hearing provided to a Respondent for a contested case shall include the following language in capital letters in 12-point boldface type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL COMPLAINT WITHIN TWENTY (20) DAYS OF THE DATE THIS NOTICE WAS

MAILED, SHALL ENTITLE THE STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

(f) If a Respondent fails to appear in person or by attorney on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the ALJ, pursuant to SOAH's rules, shall, upon adequate proof that proper notice under the APA and SOAH rules was served upon the defaulting party, enter a default judgment in the matter adverse to the Respondent. Such notice shall have included in 12-point, boldface type, the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and the relief sought in the proposed recommendation by the staff shall be granted by default.

(g) Any default judgment granted under this section will be entered on the basis of the factual allegations in the Formal Complaint contained in the Notice of Hearing, and upon proof of proper notice to the Respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §§2001.051, 2001.052, and 2001.054, as well as §107.17 of this title. Such Notice of Hearing also shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL COMPLAINT BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

(h) A Motion to Vacate the Default Judgment rendered by the ALJ must be filed within ten (10) days of service of Notice of the Default Judgment.

(1) The Motion to Vacate the Default Judgment shall be granted if movant proves by the preponderance of the evidence that the failure to attend the hearing was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the Respondent has a meritorious defense to the factual allegations contained in the Formal Complaint and granting the motion will occasion no delay or otherwise work an injury to the Board.

(2) If the Motion to Vacate the Default Judgment is granted, it shall be the responsibility of the parties to either settle the matter informally or to request a rehearing on the merits. Whenever possible, the rehearing of the case shall occur with the ALJ that heard the default matter.

(i) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence shall paginate each such exhibit or flag pertinent pages in

each such exhibit in order to expedite the hearing and the decision-making process.

(j) Within the time line set out in the SOAH rules, after the conclusion of the hearing the ALJ shall prepare and serve on the parties a Proposal for Decision that includes the ALJ's findings of fact and conclusions of law.

(k) Each hearing may be recorded by a court reporter in accordance with the APA and SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript and said request shall be sent directly to the court reporter and the requesting party shall notify the other party in writing of the request.

The provisions of this §107.25 adopted to be effective September 14, 2010, 35 TexReg 8342; amended to be effective September 30, 2012, 37 TexReg 7484.

§107.26. Failure to Attend Hearing and Default.

(a) If a party who does not have the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge shall issue a default proposal for decision, rather than continuing or dismissing the case and requiring the board to dispose of the case on a default basis as an informal disposition.

(b) If a party who does have the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge shall dismiss the case for want of prosecution, any relevant application will be withdrawn, and the board may not consider a subsequent petition from the party until the first anniversary of the date of dismissal of the case.

The provisions of this §107.26 adopted to be effective September 30, 2012, 37 TexReg 7484.

§107.29. Licenses. If a license holder makes timely and sufficient application for the renewal of a license or for a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of the agency order or a later date when fixed by order of the reviewing court.

The provisions of this §107.29 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10543.

§107.31. Personal Service. The board may command the sheriff or any constable in the State of Texas or any agent or investigator of the board to serve a subpoena to compel the attendance of witnesses for examination under oath and the production for inspection and

copying of books, accounts, records, papers, correspondence, documents and other evidence relevant to the investigation of alleged violations of statutes relating to the practice of dentistry. If a person fails to comply with an investigative subpoena the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County.

The provisions of this §107.31 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10543.

§107.40. Reimbursement. A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to testify or give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purpose of a proceeding at the State Office of Administrative Hearing (SOAH) is entitled to receive (in accordance with the Administrative Procedure Act, Texas Government Code §2001.103, and other applicable state law):

(1) mileage reimbursement at the rate equal to the maximum fixed mileage allowance specified in the revenue rulings issued by the Internal Revenue Service under the federal income tax regulations as announced by the Texas Comptroller for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence and the person uses the person's personally owned or leased motor vehicle for the travel;

(2) reimbursement of the transportation expenses of the witness or deponent for going to and returning from the place where the hearing is held or the deposition is taken, if the place is more than 25 miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel;

(3) reimbursement of the meal and lodging expenses (at the state rate) of the witness or deponent while going to and returning from the place where the hearing is held or deposition taken, if the place is more than 25 miles from the person's place of residence;

(4) \$25 for each day or part of a day that the person is necessarily present.

The provisions of this §107.40 adopted to be effective September 14, 2010, 35 TexReg 8342.

§107.47. Depositions.

(a) The deposition of any witness may be taken upon a commission issued by the executive director upon the written request of any party, a copy of which shall be served on the non-requesting party.

(b) The written request shall contain the name, address, and title, if any, of the witness; a description of

the books, records, writings, or other tangible items the requesting party wishes the witness to produce at the deposition; the date and location where the requesting party wishes the deposition to be taken; and a statement of the reasons why the deposition should be taken and the items produced.

(c) Depositions may be taken by telephone and by non-stenographic recording. The recording or transcript may be used by any party to the same extent as a stenographic deposition, provided all other parties are supplied with a copy of the recording and the transcript to be used. The witness in a telephonic or non-stenographic deposition may be sworn by any notary. The transcript of such deposition shall be submitted to the witness for signature in accordance with Texas Government Code Annotated §2001.099.

(d) Notwithstanding any other provisions of these sections, the executive director may issue a commission to take a deposition prior to the filing of a formal complaint if, in the opinion of the executive director, such a commission is necessary for either party to preserve evidence and testimony or to investigate any potential violation or lack of compliance with the Act, the rules and regulations, or orders of the Board. The commission may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and to compel the production of books, records, papers or other objects.

(e) A deposition in a contested case shall be taken in the county where the witness:

- (1) resides;
- (2) is employed; or
- (3) regularly transacts business in person.

(f) Cost of Expert Witnesses. When a party takes the oral deposition of an expert witness retained by the opposing party, all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition must be paid by the party that retained the expert.

The provisions of this §107.47 adopted to be effective September 14, 2010, 35 TexReg 8342.

§107.48. Subpoenas.

(a) Investigative Subpoenas. Pursuant the Dental Practice Act, the Board has the authority to issue subpoenas to compel the attendance of witnesses and to issue subpoenas duces tecum to compel the production of books, records, or documents. The pendency of a SOAH proceeding does not preclude the Board from issuing an investigative subpoena at any time.

(b) SOAH Subpoenas. Subsequent to the filing of a formal Complaint, any party may request in writing that the Executive Director issue a subpoena or subpoena duces tecum in accordance with §2001.089 of the APA upon a showing of good cause.

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(3) If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date; and the location at which the items are sought to be produced.

(4) The party requesting a subpoena duces tecum shall describe and recite with clarity, specificity, and particularity the books, records, documents to be produced.

(c) Service and expenses.

(1) A subpoena issued at the request of the board's staff may be served either by a board investigator or by certified mail in accordance with the Dental Practice Act Section 263.008. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the board's staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(2) A subpoena issued at the request of any party other than the board shall be addressed to a sheriff or constable for service in accordance with the APA §2001.089.

(d) Fees and travel. A witness called at the request of the Board shall be compensated and reimbursed for travel in accordance with this title. An expert witness called at the request of the Board shall be paid a compensation fee as set by agency policy and reimbursed for travel in accordance with this title.

(e) Additional reasons for granting a subpoena. Notwithstanding any other provisions of this section, the executive director may issue a subpoena if, in the opinion of the Executive Director, such a subpoena is necessary to preserve evidence and testimony regarding any potential violation or lack of compliance with the Dental Practice Act, the rules and regulations, or orders of the Board.

(f) Requests for issuance of subpoenas or commissions requiring deposition. Requests for issuance of subpoenas or commissions requiring deposition shall be directed to the agency not later than the tenth day before the date the witness or deponent is required to appear. The parties may agree to modify the time period prescribed by this section.

The provisions of this §107.48 adopted to be effective January 1, 1976; amended to be effective November 28, 1977, 2 TexReg 4410; amended to be effective November 21, 1978, 3 TexReg 3895; amended to be effective February 18, 1980, 5 TexReg 389; amended to be effective July 24, 1992, 17 TexReg 4948; amended to be effective November 30, 1999, 24 TexReg 10544; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.49. Proposals for Decision.

(a) If in a contested case a majority of the members of the Board who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the members of the board who are to render the decision. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.

(b) Upon the expiration of the twentieth day following the time provided for the filing of exceptions and briefs in §107.50 of this title (relating to Filing of Exceptions, Briefs, and Replies), the proposal for decision may be adopted by written order of the agency, unless exceptions and briefs shall have been filed in the manner required in §107.50 of this title (relating to Filing of Exceptions, Briefs, and Replies).

The provisions of this §107.49 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10544.

§107.50. Filing of Exceptions, Briefs, and Replies. Exceptions shall be filed within fifteen (15) days after the date of service of the Proposal for Decision. A reply to the exceptions shall be filed within fifteen (15) days of the filing of the exceptions. All SOAH rules regarding exceptions and replies shall govern this section.

The provisions of this §107.50 adopted to be effective January 1, 1976; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.51. Findings of Fact and Conclusions of Law.

(a) The agency may change a finding of fact or conclusion of law made by the administrative law judge if the agency determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(b) The agency shall state in writing the specific reason and legal basis for a change made under this section.

The provisions of this §107.51 adopted to be effective November 30, 1999, 24 TexReg 10544.

§107.52. Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the agency. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.

The provisions of this §107.52 adopted to be effective January 1, 1976.

§107.53. Final Decisions and Orders.

(a) All final decisions and orders of the agency shall be in writing and shall be signed by the president or other presiding member and secretary of the board.

(b) All parties shall be notified either personally or by first class mail of any decision or order.

(c) On issuance of a decision or order or an order ruling on a motion for rehearing, the agency shall send a copy of the decision or order by first class mail to the attorneys of record or, if a party is not represented by an attorney, to the party, and shall keep an appropriate record of the mailing. A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed.

The provisions of this §107.53 adopted to be effective January 1, 1976; amended to be effective May 28, 1979, 4 TexReg 1764; amended to be effective July 24, 1992, 17 TexReg 4948; amended to be effective November 30, 1999, 24 TexReg 10545.

§107.54. Administrative Finality.

(a) A decision in a contested case is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is rendered; or

(B) the motion is overruled by operation of law.

(3) if the agency finds that an imminent peril to the public health, safety, or welfare requires

immediate effect of a decision or order, on the date the decision is rendered, or;

(4) on the date specified in the order for a case in which all parties agree to the specified date in writing or on the record, if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered.

(b) If a decision or order is final under subsection (a)(3) of this section, the agency must recite in the decision or order the finding made under subsection (a)(3) of this section and the fact that the decision is final and effective on the date rendered.

The provisions of this §107.54 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10545; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.55. Motions for Rehearing.

(a) A timely motion for rehearing is a prerequisite to an appeal in a contested case, except that a motion for rehearing of a decision or order that is final under §107.54(a)(3) or (4) of this title (relating to Administrative Finality), is not a prerequisite to an appeal.

(b) A decision that is final under §107.54(a)(2), (3), or (4) of this title (relating to Administrative Finality) is appealable.

The provisions of this §107.55 adopted to be effective January 1, 1976; amended to be effective June 12, 1992, 17 TexReg 3907; amended to be effective November 30, 1999, 24 TexReg 10545; amended to be effective September 14, 2010, 35 TexReg 8342.

§107.56. Motions for Rehearing: Procedures.

(a) A motion for rehearing in a contested case must be filed with the Board not later than the 20th day after the date on which the party or the party's attorney of record is notified as required by §107.53 of this title (relating to Final Decisions and Orders), of a decision or order that may become final.

(b) A reply to a motion for rehearing must be filed with the agency not later than the 30th day after the date on which the party or the party's attorney of record is notified as required by §107.53 of this title (relating to Final Decisions and Orders) of the decision or order that may become final.

(c) The agency shall act on a motion for rehearing not later than the 45th day after the date on which the party or the party's attorney of record is notified as required by §107.53 of this title (relating to Final Decisions and Orders) of the decision or order that may become final or the motion for rehearing is overruled by operation of law. If the board includes a member who receives no salary except for per diem for his work as a board member and who resides outside Travis county, the board may rule on a motion for rehearing at

a meeting or by mail, telephone, telegraph, or other suitable means of communication.

(d) The agency may by written order extend the time for filing a motion or reply or taking action, except that an extension may not extend the period for agency action beyond the 90th day after the date on which the party or the party's attorney of record is notified as required by §107.53 of this title (relating to Final Decisions and Orders) of the decision or order that may become final.

(e) In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date on which the party or the party's attorney of record is notified as required by §107.53 of this title (relating to Final Decisions and Orders) of the decision or order that may become final.

The provisions to this §107.56 adopted to be effective November 30, 1999, 24 TexReg 10545.

§107.57. The Record. The Record in a contested case includes:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the administrative law judge; and
- (7) all staff memoranda or data submitted to or considered by the administrative law judge or members of the agency who are involved in making the decision.

The provisions of this §107.57 adopted to be effective January 1, 1976; amended to be effective May 3, 1976, 1 TexReg 1003; amended to be effective November 30, 1999, 24 TexReg 10546.

§107.58. Cost of Appeal.

(a) The agency may assess the cost of any transcript to the requesting party. This does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript.

(b) A party who appeals a final decision in a contested case will be required to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be sent to the reviewing court.

(c) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

The provisions of this §107.58 adopted to be effective January 1, 1976; amended to be effective November 30, 1999, 24 TexReg 10546.

§107.59. Ex Parte Consultations.

(a) Unless required for the disposition of ex parte matters authorized by law, Board members or Board employees assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(b) A Board member or Board employee may communicate ex parte with another Board member or Board employee unless prohibited by other law.

(c) Under the APA, Texas Government Code §2001.090, a Board member or Board employee assigned to render a decision or make findings of fact and conclusions of law in a contested case may communicate ex parte with a Board employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

The provisions of this §107.59 adopted to be effective January 1, 1976; amended to be effective September 14, 2010, 35 TexReg 8343.

§107.60. Adopting, Repealing, or Amending Rules.

(a) All rules shall be adopted, repealed, or amended in accordance with the Administrative Procedure Act. Prior to adopting, repealing, or amending any rule, the agency shall give at least 30 days notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state for publication in the Texas Register and a copy of the notice delivered to the lieutenant governor and speaker of the House of Representatives. No Rule or regulation proposed for adoption may be adopted until such proposed rule or regulation has been published in the Texas Register as provided by law. The notice shall include the following:

(1) A brief explanation of the rule;

(2) The text of the proposed rule, except any portion omitted as provided in the Government Code, Chapter 2002, §2002.014.

(3) A statement of the statutory or other authority under which the rule is proposed to be adopted.

(4) A fiscal note showing the name and title of the officer preparing it.

(5) A note about public benefits and costs showing the name and title of the officer responsible for preparing it.

(6) A local employment impact statement prepared under the Government Code, Chapter 2001, §2001.022, if required.

(7) A request for comments on the proposed rule from any interested person.

(8) Any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the Register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rule-making proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, the agency shall give all interested a reasonable opportunity to submit data, views, or arguments, orally or in writing.

(d) The agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing that it finds practicable, if the agency:

(1) finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice; and

(2) states in writing the reasons for its finding.

(3) A rule adopted under this section may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

(4) The agency shall file an emergency rule adopted under this section and the agency's written reasons for adoption with the secretary of state for publication in the Texas Register.

(e) The agency may use informal conferences and consultations to obtain opinions and advice of interested persons about contemplated rule-making. The agency also may appoint committees of experts or interested persons or representatives of the public to advise it about any contemplated rule-making. The powers of these committees are advisory only.

(f) Any interested person may petition the agency requesting the adoption of a rule. The petition must be presented in substantially the form found in §107.62 of this title (relating to Appendix). Not later than the 60th day after the date of submission of a petition the agency shall:

(1) deny the petition in writing, stating the reasons for its denial; or

(2) initiate a rulemaking proceeding.

The provisions of this §107.60 adopted to be effective January 1, 1976; amended to be effective May 3, 1976, 1 TexReg 1003; amended to be effective May 24, 1976, 1 TexReg 1252; amended to be effective November 30, 1999, 24 TexReg 10546.

§107.62. Petition for Adoption of a Rule.

(a) (Here give name and complete mailing address of applicant on whose behalf the application is filed, hereinafter called applicant.)

(b) Caption. Applicant hereby seeks (Here make specific reference to the rule or rules which it is proposed to establish, change or amend, so that it or they may be readily identified, prepared in a manner to

indicate the words to be added or deleted from the current text, if any.)

(c) Proposed change. (Here make reference to an exhibit to be attached to and incorporated by reference to the petition, the said exhibit to show the amendment providing for the proposed new provision, rule, regulation, rate practice or other change, including the proposed effective date, application and all other necessary information, in the exact form in which it is to be published, adopted or promulgated.)

(d) Justification. (Here submit the justification for the proposed action in narrative form with sufficient information to inform the agency and any interested party fully of the facts upon which applicant relies.)

(e) Resume or concise abstract. (Here file with the petition a concise but complete resume or abstract of the information required in subsections (a), (b), (c), and (d) of this section.)

(f) Signature. Respectfully submitted, (Applicant) (Attorney or representative) (Complete address)

The provisions of this §107.62 adopted to be effective January 1, 1976.

§107.63. Informal Disposition and Alternative Dispute Resolution.

(a) Policy. It is the Board's policy to encourage, where appropriate, the resolution and early settlement of contested disciplinary matters and internal disputes through informal and alternative dispute resolution procedures.

(b) Informal Disposition. Pursuant to Texas Government Code, Chapter 2001 et seq., ultimate disposition of any complaint or matter pending before the Board may be made by stipulation, agreed settlement, or consent order. Under Texas Occupations Code §263.007 and §263.0075, such a disposition may be reached through review at an informal settlement conference.

(c) Board Settlement Conference.

(1) One or more members of the Board shall represent the full Board at the Board settlement conference.

(2) The Board will provide the licensee notice in writing of the time, date, and place of the settlement conference not later than the 45th day before the date the conference is held. Such notification shall inform the licensee: of the specific allegations against the licensee and the information board staff intends to use at the informal settlement conference; that he or she may be represented by legal counsel; that the licensee may offer a rebuttal to the allegations, including the exhibits or the testimony of such witnesses as he or she may desire; that the Board will be represented by one or more of its members and by legal counsel; and that he or she may request that the matter be considered by

the Board according to procedures described in Texas Occupations Code §263.007. The Board's rules or policies relating to the informal disposition of cases shall be enclosed with the notice of the settlement conference. Notice of the settlement conference, with enclosures, shall be sent by first class United States Mail to the address of record of the licensee on file with the Board or the licensee's attorney of record. A settlement conference may be rescheduled if board staff does not provide adequate notice as required by this subsection.

(3) The licensee must provide to board staff his rebuttal not later than the 15th day before the date of the conference in order for that information to be considered at the conference.

(4) The settlement conference shall be informal and will not follow the procedure established in State Office of Administrative Hearing (SOAH) rules for contested cases. The settlement conference will be conducted by a representative(s) of the Board. The Board's representative may call upon the Board's attorney at any time for assistance in conducting the settlement conference. The licensee, his or her attorney, representative(s) of the Board, and Board staff may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate.

(5) The Board's representative(s) may prohibit or limit access to the Board's investigative file by the licensee, his or her attorney, and the complainant and his or her representative.

(6) The Board's representative(s) shall exclude from the settlement conference all persons except the patient or other witnesses; the licensee and his or her attorney; the complainant; Board members; and Board staff.

(7) At the conclusion of the settlement conference, the Board's representative(s) shall make recommendations for resolution or correction of any alleged violations of the Dental Practice Act or of the Board rules. Such recommendations may include any disciplinary actions authorized by Texas Occupations Code §263.002 or a remedial plan authorized by §263.0077 of the Dental Practice Act. The Board's representative(s) may, on the basis that a violation of the Dental Practice Act or the Board's rules has not been established, either close the case, or refer the case to Board staff for further investigation. Closure of a case by the Board's representative(s) shall be given effect immediately without the necessity of presentation to the full Board. A recommendation to close a case requires no further action by the Respondent.

(8) Board staff shall draft a proposed settlement agreement or remedial plan reflecting the settlement recommendations, which the licensee shall

either accept or reject. To accept the settlement recommendations, the licensee must sign the proposed agreed settlement order or remedial plan and return it to the Board. Inaction by the licensee shall constitute rejection. If the licensee rejects the proposed agreed settlement order or remedial plan, the matter shall be referred to SOAH for a contested case hearing.

(9) Following acceptance and execution of the proposed agreed settlement order or remedial plan by the licensee, said proposed order shall be submitted to the entire Board for approval.

(10) On request of the licensee, board staff shall make a recording of the conference. The recording is part of the investigative file and may not be released to a third party. Board staff may charge the licensee a fee to cover the cost of recording the conference. Board staff shall provide a copy of the recording to the licensee on the licensee's request.

(d) Use of ADR In Contested Disciplinary Matters.

(1) The Board Secretary or the Executive Director may refer a contested disciplinary matter to an ADR process to seek resolution or correction of any alleged violations of the Dental Practice Act or of the Board rules. Such ADR processes may include:

(A) any procedure or combination of procedures described by Chapter 154, Texas Civil Practice and Remedies Code; or

(B) any procedure described in SOAH Rules of Procedure.

(2) Any agreement or recommendation resulting from the application of an ADR process to a contested disciplinary matter shall be documented in written form and signed by the licensee, and legal counsel for the Board and/or the Executive Director or Board Secretary. Such an agreement or recommendation may include any disciplinary actions authorized by §263.002 of the Dental Practice Act or a remedial plan authorized by §263.0077 of the Dental Practice Act.

(3) If the ADR process results in no agreement or recommendation, the matter shall be referred to SOAH for a contested case hearing.

(e) Consideration by the Board.

(1) All proposed agreed settlement orders, remedial plans, agreements or other recommendations shall be reviewed by the full Board for approval.

(2) Upon an affirmative majority vote, the Board shall enter an order approving the proposed agreed settlement order, remedial plan, agreement, or recommendation. Said order shall bear the signature of the Presiding Officer and Board Secretary, or of the officer presiding at such meeting.

(3) If the Board does not approve a proposed settlement order, remedial plan, agreement, or recommendation, the licensee shall be so informed. The matter shall be referred by the Board to the Board

Secretary and Executive Director for consideration of appropriate action.

(f) Restitution.

(1) Pursuant to Texas Occupations Code §263.0075, the Board may order a licensee to pay restitution to a patient as provided in a proposed agreed settlement order or other agreement or recommendation, instead of or in addition to any administrative penalty.

(2) The amount of restitution ordered may not exceed the amount the patient paid to the licensee for the service or services from which the complaint arose. The Board shall not require payment of other damages or make an estimation of harm in any order for restitution.

The provisions of this §107.63 adopted to be effective July 18, 1989, 14 TexReg 2952; amended to be effective April 19, 1998, 23 TexReg 3831; amended to be effective November 30, 1999, 24 TexReg 10547; amended to be effective May 10, 2004, 29 TexReg 4473; amended to be effective February 24, 2008, 33 TexReg 1546; amended to be effective February 2, 2010, 35 TexReg 631; amended to be effective September 14, 2010, 35 TexReg 8342; amended to be effective December 10, 2013, 38 TexReg 8831.

§107.64. Required Reporting. The Texas State Board of Dental Examiners may require a dentist, dental hygienist, dental laboratory, or other licensee to submit reports to insure compliance with a board order.

The provisions of this §107.64 adopted to be effective May 31, 1990, 15 TexReg 2801.

§107.65. Time Limits. Unless a specific time limit is imposed by board order, a licensee shall complete the community service, continuing education, and other requirements imposed by a board order in regular increments over the period of probation imposed, and shall report compliance in accordance with §107.64 of this title (relating to Required Reporting).

The provisions of this §107.65 adopted to be effective May 31, 1990, 15 TexReg 2801.

§107.66. Application for Modification of Board Order.

(a) A licensee or registrant in current status seeking modification of a prior Board Order may submit a written application for modification of the Board Order. The application shall be submitted to the General Counsel of the Board and shall include at least the following:

(1) specific sanction of which modification is requested;

(2) evidence of compliance with past and current Board Orders;

(3) summary of reasons for request;

(4) benefit to the public if granted; and

(5) exhibits or testimonials, including but not limited to any continuing education or other rehabilitative activities.

(b) An application for modification shall not be accepted before the longer of:

(1) twelve months from the effective date of the Board Order; or

(2) the successful completion of two-thirds (2/3) of the total compliance period of the Board Order.

(c) An applicant for modification shall meet all requirements necessary for the Board to access the applicant's criminal history information, including submitting fingerprint information and paying all associated costs.

The provisions of this §107.66 adopted to be effective May 31, 1990, 15 TexReg 2801; amended to be effective March 7, 2013, 38 TexReg 1362.

§107.67. Review of Application for Modification.

(a) Applications for modification may be reviewed at an informal settlement conference empaneled by staff or Board members. The panel shall make a recommendation to the Board concerning the application.

(b) The Board, in its discretion, may accept or reject the panel's recommendation to grant or deny the application or modify the original findings to reflect changed circumstances.

(c) If the application for modification is denied by the Board, a subsequent application may not be considered by the Board until twelve (12) months from the date of denial of the previous application.

(d) A person applying for modification of a Board Order has the burden of proof.

(e) The Board may give notice to any patient or other party involved in any allegation for which application for modification is received by the Board.

The provisions of this §107.67 adopted to be effective May 31, 1990, 15 TexReg 2802; amended to be effective March 7, 2013, 38 TexReg 1362.

§107.68. Appearances. Nothing in this subchapter shall be construed to prevent any licensee of the Board or any other person from appearing before the Board for consideration of any matter. Thirty (30) days prior to an appearance, the person shall submit a request to appear stating the substance of the matter to be discussed. The Board may limit the time within which any party may address the Board and may limit the appearance to consideration of written materials.

The provisions of this §107.68 adopted to be effective May 31, 1990, 15 TexReg 2802; amended to be effective March 7, 2013, 38 TexReg 1362.

§107.69. Alternative Informal Assessment of Administrative Penalty.

(a) Purpose and Construction. The purpose of this rule is to set forth a procedure for the imposition of an alternative informal assessment of administrative penalty pursuant to §264.0115, Dental Practice Act, for violations identified in §107.202 of this title (relating to Disciplinary Guidelines and Administrative Penalty Schedule), as violations that do not involve the provision of direct patient care by a person licensed or registered under these rules.

(b) Notice of Intention to Impose Administrative Penalty, Response.

(1) Before an administrative penalty is imposed under this rule, the board shall provide a licensee/registrant who is alleged to have committed an administrative violation with a Notice of the allegations regarding an administrative violation.

(2) The Notice shall include, at a minimum

(A) a clear statement of the violation, including a citation to the relevant section of the Board's rules and the Dental Practices Act;

(B) the amount of the penalty assessed for each violation; and

(C) a statement that the cited person may either pay the penalty or appeal the penalty in writing.

(3) The licensee/registrant may respond to the notice as follows:

(A) The licensee/registrant may pay the proposed administrative penalty; or

(B) The licensee/registrant may appeal the penalty in writing.

(4) The licensee/registrant must respond to the Notice within twenty (20) calendar days of receipt by the licensee/registrant of the Notice (if the Notice is presented in person) or within twenty (20) calendar days of the date the Notice is mailed, by certified mail, to the licensee/registrant (if the Notice is mailed).

(5) A report of the payments received for administrative penalties shall be made to the board at each regularly scheduled meeting.

(6) A penalty assessed under this section may consist only of a monetary penalty that does not exceed \$1,000.00 for each violation. The total amount of penalties assessed against a person under the Alternative Informal Assessment of Administrative Penalty may not exceed \$3,000.00 in a calendar year.

(7) A licensee/registrant who is assessed an administrative penalty under this section is entitled to a hearing under Chapter 2001, Government Code.

(c) Personal Appearance at an Administrative Penalty Conference.

(1) If, within twenty (20) calendar days of receipt of the Notice (if the Notice is presented in person) or of the date the Notice is mailed to the licensee/registrant (if the Notice is mailed), the licensee/registrant requests, in writing, an appeal of the

penalty, an administrative penalty conference may be scheduled pursuant to this rule.

(2) If the licensee/registrant fails to respond to the Notice within twenty (20) calendar days, the violation may not be considered under the administrative penalty process but will proceed to the formal hearing process at the State Office of Administrative Hearings for a violation under §263.002, Texas Occupations Code.

(3) At an administrative penalty conference, the panel members may only consider assessing a monetary penalty equal to that imposed by the Alternative Informal Assessment of Administrative Penalty Standard Schedule or dismissal of the matter. The panel may not consider revocation, suspension, or any other sanction, but the panel may refer the violation to the formal hearing process at the State Office of Administrative Hearing for a violation under §263.002, Texas Occupations Code.

(d) Administrative Penalty Conference Procedure.

(1) Administrative penalty conferences shall be held by a panel of Board representatives consisting, at a minimum, of an attorney of the Board, and either the investigator responsible for the case or the Director of Enforcement, and a member of the Board.

(2) The Board will provide the licensee/registrant notice in writing of the time, date, and place of the administrative penalty conference. Such notification shall inform the licensee/registrant: of the nature of the alleged violation; that he or she may be represented by legal counsel; and that he or she may request that the matter be considered by the Board according to procedures described in §263.007, Dental Practice Act. A copy of the Board's rules relating to the informal disposition of cases shall be enclosed with the notice of the administrative penalty conference. Notice of the administrative penalty conference, with enclosures, shall be sent by certified mail, return receipt requested, to the current address of the licensee/registrant on file with the Board.

(3) The administrative penalty conference shall be informal and will not follow the procedure established in State Office of Administrative Hearing (SOAH) rules for contested cases. The licensee/registrant, his or her attorney, and the Board representative and Board staff may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate. Any documentary evidence received by the Board less than ten (10) days before the scheduled dates of the administrative penalty conference will not be considered by the panel.

(4) The administrative penalty conference shall be conducted by a representative of the Board. The Board's representative may call upon the Board's

attorney at any time for assistance in conducting the administrative penalty conference. The Board's representative may question any witness, and shall afford each participant in the administrative penalty conference the opportunity to make such statements as are material and relevant.

(5) The Board's representative may prohibit or limit access to the Board's investigative file by the licensee/registrant, his or her attorney, and the complainant and his or her representative.

(6) The Board's representative shall exclude from the administrative penalty conference all persons except witnesses during their testimony, the licensee/registrant, his or her attorney, the complainant, Board members, and Board staff.

(7) At the conclusion of the administrative penalty conference, the panel shall recommend that the case be closed, impose penalties in accordance with this section, or may refer the violation to the formal hearing process at the State Office of Administrative Hearing for a violation under §263.002, Texas Occupations Code. Closure of a case by the panel shall be given effect immediately without the necessity of presentation to the full Board.

(8) The licensee/registrant shall either accept or reject the administrative penalty assessment presented after the meeting. To accept the administrative penalty assessment, the licensee/registrant must sign the penalty assessment and return it to the Board with payment within ten (10) days of the date of the administrative penalty letter. Inaction by the licensee/registrant shall constitute rejection. If the licensee/registrant fails to notify the Board in writing of his/her intent to appeal or to accept the administrative penalty assessment in writing with payment included within ten (10) days of receipt of payment, payment shall be considered late and additional fees will be due in accordance with Alternative Informal Assessment of Administrative Penalty Standard Schedule. If the licensee/registrant fails to comply with the recommendation of the administrative penalty conference panel, the matter may be referred to the formal hearing process at the State Office of Administrative Hearing for a violation under §263.002, Texas Occupations Code.

(e) Reports of Imposition of Administrative Penalty.

(1) An imposition of an administrative penalty shall be a public record.

(2) The imposition of an administrative penalty shall not be considered a restriction or limitation on the license of the licensee/registrant and shall not be reported to the National Practitioner Data Bank.

(3) The citation, Notice, a written response or request for personal appearance by the

licensee/registrant, any information provided to and any report of a panel of Board representatives, shall remain confidential, in accordance with §254.006, Dental Practice Act.

(f) Unpaid Administrative Penalties. If a licensee/registrant fails to pay an administrative penalty by the due date, the Board may set the case for a hearing for a violation under §263.002, Texas Occupations Code. The hearing shall be held under Chapter 263, Texas Occupations Code, and a sanction may be imposed against the license/registration of the licensee/registrant for the violation that was the subject of the administrative penalty assessment.

The provisions of this §107.69 adopted to be effective February 2, 2010, 35 TexReg 631; amended to be effective September 30, 2012, 37 TexReg 7484.

SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

§107.100. Receipt, Processing, and Coordination of Complaints.

(a) The Enforcement Division of the State Board of Dental Examiners, under supervision of the Director of Enforcement, shall have primary responsibility for the receipt, processing, and assignment of complaints filed by patients and/or other members of the general public or dental profession against Texas dentists and dental hygienists and/ or dental laboratory registrants. All complaints shall be processed, coordinated, and investigated with the coordination of the Board Secretary or his/her designee. All complaints and investigations shall follow the prescribed and mandated procedures as detailed in the Occupations Code, Chapter 255.

(b) In order to insure that all complaints received are accounted for and follow the prescribed protocols, a complaint/investigative procedure shall be established and utilized.

(c) The term complaints includes anonymous written complaints.

The provisions of this §107.100 adopted to be effective April 19, 1996, 21 TexReg 3181; amended to be effective November 30, 1999, 24 TexReg 10548; amended to be effective February 11, 2003, 28 TexReg 1177.

§107.101. Preliminary Inquiry of a Complaint.

(a) A complaint received by the board must be reviewed by board staff to determine jurisdiction. A complaint shall be jurisdictional if the subject of the complaint is a licensee or is practicing dentistry without a license. The board may not consider a complaint that is filed with the board after the fourth anniversary of the date the act that is the basis of the complaint occurred; or the complainant discovered, or in the exercise of

reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.

(b) Board staff shall determine whether the continued practice by a licensee or the continued performance by a licensee of a procedure for which the person holds a license or registration would constitute a clear, imminent or continuing threat to a person's physical health or well-being. If such determination is made, board staff shall refer such complaint to the board or executive committee for the temporary suspension of the license or registration pursuant to §263.004 of the Dental Practice Act.

(c) If the board has jurisdiction, board staff shall complete a preliminary inquiry of the complaint not later than the 60th day after the date of receiving the complaint. If the complaint alleges a violation of the standard of care, the staff member conducting the preliminary inquiry of the complaint shall be or shall consult with a licensed dentist or dental hygienist.

(d) During this preliminary inquiry, board staff may make reasonable efforts to contact the complainant concerning the complaint. Any additional information received from the complainant will be added to the information maintained on the complaint.

(e) During this preliminary inquiry, the subject licensee may be given the opportunity to respond to the allegations. If the subject licensee is given this opportunity, the response must be received within the time prescribed by board staff. Any additional information received from the subject licensee will be added to the information maintained on the complaint.

(f) At the conclusion of the preliminary inquiry, board staff shall determine whether there is probable cause to officially proceed on the complaint.

(g) If the board fails to complete the preliminary inquiry in the time required by this section, the board's official investigation of the official complaint is considered to commence on that date.

The provisions of this §107.101 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.102. Commencement of an Official Complaint.

(a) If the preliminary inquiry shows that there is probable cause to justify further investigation, board staff shall officially proceed on the complaint.

(b) If the preliminary inquiry shows that there is not probable cause to justify further investigation, an official complaint will not be commenced and the complainant and licensee will be notified.

(c) Once an official complaint is commenced:

(1) board staff shall assign a category and priority to the complaint;

(2) the complainant and licensee will be notified of the commencement of the official complaint and receive notice of the complaint's status, at least

quarterly, until final disposition of the complaint, unless such notice would jeopardize an investigation; and

(3) the complaint will be investigated, to include the appropriate referral to an Expert Panel.

(d) Every complaint shall be classified into one or more of the following categories:

(1) Quality of Care: failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(2) Sanitation: failure to maintain the dental office in a sanitary condition.

(3) Professional Conduct: violations arising out of the day-to-day practice of dentistry, not including administrative requirements.

(4) Administration: failure to follow the administrative requirements of the Dental Practice Act and/or the board's rules and regulations.

(5) Dental Laboratories: violations of the Dental Practice Act and/or the board's rules and regulations pertaining to the operation of dental laboratories.

(6) Business Promotion: violations arising out of efforts to obtain business, such as advertising and referral schemes.

(e) Every complaint shall be assigned a priority classification.

(1) Priority 1 represents more serious allegations of violations, including Patient Mortality, Patient Morbidity, Practicing Without a License, and Sanitation.

(2) Priority 2 represents less serious threats to the public welfare, including records-keeping violations and Advertising.

The provisions of this §107.102 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.103. Disposition of an Official Complaint.

(a) After the investigation of an official complaint is complete, board staff will determine whether a violation of the Dental Practice Act has occurred. If the complaint is related to professional competency, an Expert Panel shall assist with the determination.

(b) If the information and evidence gathered and the Expert Panel Report, if applicable, indicate that a violation of the Dental Practice Act has occurred, board staff shall initiate the appropriate action, including disciplinary action, a remedial plan, or dismissal, and obtain final approval of the board at a public board meeting.

(c) If the information and evidence gathered and the Expert Panel Report, if applicable, is insufficient to support that a violation of the Act has occurred, board staff shall dismiss the complaint and advise the board of such dismissal at a public board meeting.

(d) If a complaint is dismissed, a letter shall be sent to the complainant informing him of the dismissal and explaining the reason for the dismissal.

(e) If the complaint is dismissed, a letter shall be sent to the licensee informing him of the dismissal. Board staff may also inform the licensee of any recommendations that may improve his practice.

The provisions of this §107.103 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.104. Confidentiality of Investigations.

(a) Investigation files and other records are confidential, except board staff shall inform the license holder of the specific allegations against the license holder.

(b) No employee, agent, or member of the board may disclose confidential information except in the following circumstances:

(1) to another local, state or federal regulatory agency;

(2) to local, state or federal law enforcement agencies;

(3) to other persons if required during the course of the investigation;

(4) to other entities as required by law; and

(5) a person who has provided a statement may receive a copy of the statement.

(c) A final disciplinary action of the board is not excepted from public disclosure, including:

(1) the revocation or suspension of a license;

(2) the imposition of a fine on a licensee;

(3) the placement on probation with conditions of a licensee whose license has been suspended;

(4) the reprimand of a license holder; or

(5) the issuance of a warning letter to a licensee.

The provisions of this §107.104 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.105. Request for Information and Records from Licensees.

(a) Dental records. Upon request by board staff, a licensee shall furnish to board staff copies of dental records or the original records within a reasonable time period, as prescribed at the time of the request, but not later than the 30th day after the request is made. "Reasonable time," as used in this section, shall mean fourteen calendar days or a shorter time if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed. Failure to timely respond may be grounds for disciplinary action by the board.

(b) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a licensee shall respond in writing to all written board requests for information within ten

days of receipt of such request. Failure to timely respond may be grounds for disciplinary action by the board.

The provisions of this §107.105 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.106. Use of Expert Panel.

(a) If the preliminary inquiry shows that there is probable cause that an act by a licensee falls below an acceptable standard of care, all the relevant information and records collected by board staff shall be reviewed by an Expert Panel of Reviewers, who shall report the panel's determinations based on the review. Each Expert Panel shall include an initial and second Reviewer and, if necessary, a third Reviewer.

(b) Composition and Duties. The Expert Panel shall be composed of dentists and dental hygienists approved by the board to assist with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist Reviewers.

(c) Qualifications. To be eligible to serve on the Expert Panel, a dentist or dental hygienist must meet the following criteria:

(1) licensed in Texas to practice dentistry or dental hygiene;

(2) no history of disciplinary action by the board;

(3) acceptable malpractice complaint history;

(4) in active practice currently and at the time of the alleged violation;

(5) demonstrated knowledge of accepted standards of dental care for the diagnosis, care and treatment related to the alleged violation;

(6) demonstrated training or experience to offer an expert opinion regarding accepted standards of dental care; and

(7) certification by a certifying board recognized by the American Dental Association if the dentist or dental hygienist limits his practice to a specific specialty area.

(d) Term; Resignation; Removal.

(1) An Expert Reviewer shall serve on the Expert Panel until resignation or removal from the Expert Panel.

(2) An Expert Reviewer may resign from the Expert Panel at any time.

(3) An Expert Reviewer may be removed from the Expert Panel for good cause at any time on order of the Executive Director. Good cause for removal includes:

(A) failure to maintain the eligibility requirements set forth in subsection (c) of this section;

(B) failure to inform the board of potential or apparent conflicts of interest;

(C) repeated failure to timely review complaints or timely submit reports to the board;

(D) repeated failure to prepare the reports in the prescribed format.

(e) A member of the Executive Committee may make an interim appointment of an Expert Reviewer to serve the board until the Reviewer can be considered for appointment by the board at the next board meeting.

The provisions of this §107.106 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.107. Selection of Expert Reviewers.

(a) Reviewers for a particular complaint shall be randomly selected from among those Expert Panel members who practice in the same or similar specialty as the licensee who is the subject of the complaint.

(b) If there are no Expert Panel Members in the same specialty or if the randomly selected Reviewer has a potential or apparent conflict of interest that would prevent the Reviewer from providing a fair and unbiased opinion, that Reviewer shall not review the case and another Reviewer shall be randomly selected from among those Expert Panel members who practice in the same or similar specialty as the licensee who is the subject of the complaint, after excluding the previously selected Reviewer.

(1) A potential conflict of interest exists if the selected Reviewer lives or practices dentistry or dental hygiene in the same geographical market as the licensee who is the subject of the complaint and:

(A) is in direct competition with the licensee; or

(B) knows the licensee.

(2) An apparent conflict of interest exists if the Reviewer:

(A) has a direct financial interest or relationship with any matter, party, or witness that would give the appearance of a conflict of interest;

(B) has a familial relationship within the third degree of affinity with any party or witness; or

(C) determines that the Reviewer has knowledge of information that has not been provided by board staff and that the Reviewer cannot set aside that knowledge and fairly and impartially consider the matter based solely on the information provided by board staff.

(c) If no Reviewer agrees to review the case who can qualify under the requirements of subsections (a) and (b) of this section, a Reviewer who has a potential conflict may review the case, provided the Expert Reviewers' Report discloses the nature of the potential conflict.

(d) If any selected Reviewer has a potential or apparent conflict of interest, the Reviewer shall notify board staff of the potential or apparent conflict.

The provisions of this §107.107 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.108. Determination of Competency by the Expert Panel.

(a) The initial Reviewer shall review all the relevant information and records collected by board staff and determine whether the licensee who is the subject of the complaint has violated the standard of care applicable to the circumstances and issue a preliminary written report of that determination.

(b) The second Reviewer shall review the initial Reviewer's preliminary report and all the relevant information and records collected by board staff and determine whether the licensee who is the subject of the complaint has violated the standard of care applicable to the circumstances. If the second Reviewer agrees with the conclusions of the initial Reviewer, the second Reviewer shall inform the initial Reviewer and the initial Reviewer shall issue a final written report on the matter. If the second Reviewer does not agree with the conclusions of the initial Reviewer, the second Reviewer shall issue a secondary written report of his determination.

(c) If the initial and second Reviewer do not agree on the determination, a third Reviewer will be necessary. The third Reviewer shall review the preliminary and secondary report and all the relevant information and records collected by board staff and determine whether the licensee who is the subject of the complaint has violated the standard of care applicable to the circumstances and issue a tertiary written report of that determination. The final written report shall be issued by the third Reviewer or the Reviewer with whom the third Reviewer concurs.

(d) The Expert Panel's written reports, including the primary, secondary, tertiary and final reports, shall be in writing and prepared to include the following:

(1) the general qualifications of each Reviewer; and

(2) the opinions of each Reviewer regarding:

(A) the relevant facts concerning the dental care rendered;

(B) the applicable standard of care;

(C) the application of the standard of care to the relevant facts;

(D) a determination of whether the standard of care has been violated; and

(E) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports.

(e) In determining competency, the Expert Reviewers may consult and communicate with each other about the complaint in formulating their opinions and reports.

The provisions of this §107.108 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.110. Compliance.

(a) The director of enforcement shall ensure that a compliance monitoring program is established and maintained for those licensees who have received a board order. The monitoring program shall be maintained by an SBDE employee assigned to act as the compliance officer.

(b) Upon determination that a licensee has not complied with the requirements specified in his or her board order, the compliance officer shall report the details of the non-compliance to the director of enforcement.

The provisions of this §107.110 adopted to be effective May 26, 2005, 30 TexReg 3020.

SUBCHAPTER C. ADMINISTRATIVE PENALTIES

§107.202. Disciplinary Guidelines and Administrative Penalty Schedule.

(a) Procedures and amount(s) for administrative penalties portrayed in this rule may be imposed on a licensee or registrant for violation(s) of the Dental Practice Act and/or Board rules and regulations.

(b) Upon review of the completed investigation file, the Executive Director or a board subcommittee, of which, at least one member is a public member of the board, shall determine the amount of penalty imposed based on a standardized penalty schedule and based on the following criteria:

(1) The seriousness of the violation, including but not limited to, the nature, circumstances, extent and the gravity of the prohibited acts and the hazard of potential hazard created to the health, safety, or welfare of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; or

(6) any other matter the justice may require.

(c) The amount of the administrative penalty may not exceed \$5000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(d) Administrative penalties may be imposed for the following violation categories as set forth in §107.101 of this title (relating to Guidelines for the Conduct of Investigation), and the amount of penalty imposed shall be in accordance with this schedule as set forth:

(1) Quality of Care violations may include, but are not limited to:

(A) Failure to treat a patient according to the standard of care in work performed in the practice of dentistry or dental hygiene;

(B) Failure to safeguard patient against avoidable infections;

(C) Misleading dental patient as to the gravity, or lack thereof, of such patient's dental needs;

(D) Failure to advise patient in advance of beginning treatment;

(E) Abandonment of patient;

(F) Negligence in treatment, which results in severe or very serious patient injury;

(G) Negligence in treatment, which results in patient death. The administrative penalty to be determined by the Board;

(H) Failure to report patient death or injury requiring hospitalization; or

(I) Failure to make, maintain and keep adequate dental records.

(J) The amount of penalty that may be imposed on Quality of Care violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000;

(ii) second offense may be up to, but not greater than \$4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or suspension to revocation.

(2) Sanitation violations may include, but are not limited to:

(A) Failure to maintain the dental office in a sanitary condition; or

(B) Failure to maintain the dental laboratory in a sanitary condition.

(C) The amount of penalty that may be imposed on Sanitation violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000;

(ii) second offense may be up to, but not greater than \$4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or suspension to revocation.

(3) Professional Conduct violations may include, but are not limited to:

(A) Failure to conduct practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(B) Failure to maintain a centralized inventory of drugs;

(C) Dispensing, administering or distributing drugs for other than dental purposes;

(D) Failure to record the dispensing, administering, or prescribing of narcotic drugs, dangerous drugs, or controlled substances to or for a dental patient in the patient's dental records;

(E) Fraudulently obtaining permits or certifications as may be required by the Board;

(F) Obtaining a fee by fraud or misrepresentation;

(G) Impairment due to addiction or excessive habitual use of alcohol or other drugs;

(H) Impairment due to continuing addiction or excessive habitual use of alcohol or other drugs while under Board order;

(I) Physically or mentally incapable of practicing in a safe manner;

(J) Delegation of surgical cutting procedure on hard or soft tissue to a non-dentist;

(K) Allowing a dental assistant to perform acts or procedures that are not reversible;

(L) Allowing an un-registered person to perform radiologic procedures;

(M) Delegation of duties to a dental hygienist who is not licensed to perform the function; and

(N) Failure to make dental records available to the Board in a timely manner upon demand.

(O) The amount of penalty that may be imposed on Professional Conduct violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000, and/or participation in the Texas Dental Peer Assistance program, if applicable, and/or suspension to revocation;

(ii) second offense may be up to, but not greater than \$4000, and/or participation in the Texas Dental Peer Assistance program, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or participation in the Texas Dental Peer Assistance program, and/or suspension to revocation.

(4) Professional Conduct violations as they relate to the practice of dental hygiene may include, but are not limited to:

(A) Diagnosing a dental disease, prescribing medication, performing a procedure which is irreversible or which involves the intentional cutting of hard or soft tissue;

(B) Practicing dental hygiene outside of the dental office of a supervising dentist, or in an alternative setting, while not under the supervision of a dentist; or

(C) Applying pit and fissure sealants or site specific subgingival medicaments while outside the dental office of the employer and not under the general supervision or direction of a dentist.

(D) The amount of penalty that may be imposed on Professional Conduct violations as they relate to the practice of dental hygiene may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000, and/or suspension to revocation;

(ii) second offense may be up to, but not greater than \$4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or suspension to revocation.

(5) Administration violations may include, but are not limited to:

(A) Failure to follow the administrative requirements of the Dental Practice Act and the Board's rules;

(B) Participation in a scheme to evade the provisions of the Dental Practice Act and the Board's rules;

(C) Circumventing the provisions of the Dental Practice Act and the Board's rules;

(D) Permitting unlicensed persons to practice in the dental office; or

(E) Knowingly provide dental care in a manner which violates federal or state law regulating insurance.

(F) The amount of penalty that may be imposed on Administration violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000;

(ii) second offense may be up to, but not greater than \$4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or suspension to revocation.

(6) Dental Laboratory violations may include, but are not limited to:

(A) Failure to comply with the requirements for registration of a commercial dental laboratory;

(B) Failure to obtain written work order(s) or prescription(s) from a licensed dentist, containing signature and dental license number, date of signature, name of patient, and description of kind and type of act, service or material ordered;

(C) Failure to keep premises and records open to inspection during working hours; or

(D) Failure to comply with the requirements for notification of change of ownership.

(E) The amount of penalty that may be imposed on Dental Laboratory violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000;

(ii) second offense may be up to, but not greater than \$4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or suspension to revocation.

(7) Business Promotion violations may include, but are not limited to:

(A) Engaging in false advertising;

(B) Creating unjustified expectation;

(C) Failure to comply with requirements pertaining to professional signs;

(D) Failure to list in advertisement, at least one dentist practicing under trade name;

(E) Failure to make timely notification to telephone company and publishers of directories of any change in status or location; or

(F) Falsely advertising as a specialist in one of the specialties as defined by the American Dental Association.

(G) The amount of penalty that may be imposed on Business Promotion violations may include, but shall not be limited to:

(i) first offense may be up to, but not greater than \$3000;

(ii) second offense may be up to, but not greater than \$4000, and/or suspension to revocation;

(iii) third offense may be up to, but not greater than \$5000, and/or suspension to revocation.

(e) Alternative Informal Assessment of Administrative Penalty, Standard Schedule. The standard sanctions outlined below shall apply to the alternative informal assessment of administrative penalty, §107.69 of this title, authorized under §264.0115, Dental Practice Act.

(1) A penalty assessed under this section may consist only of a monetary penalty that does not exceed \$1,000 for each violation. The total amount of penalties assessed against a person under this section may not exceed \$3,000 in a calendar year.

(2) The standard schedule for alternative informal assessment of administrative violations:

(A) No Consumer Information--\$250.00;

(B) Names of Dentists not Posted--\$250.00;

(C) Fail to Display Registration (Dental office)--\$250.00;

(D) Fail to Provide Records to Board--\$500.00;

(E) Fail to Provide Records to Patient--\$500.00;

(F) Fail to File Records Maintenance Agreement--\$250.00;

(G) Fail to Notify Board of Change of Information--\$250.00:

(i) Dentists;

(ii) Hygienist;

(H) Sanitation and Infection Control--\$500.00:

(i) Unsanitary Conditions;

(ii) Failure to comply with state, local, county laws;

(iii) Failure to properly sterilize or disinfect;

(iv) Healthcare workers - fail to comply with sanitation/health requirements;

(I) False/Misleading Communications/Unlawful or Deceptive Advertising--\$250.00;

(J) Specialty Announcement--\$250.00:

(i) Announcement of credential in non-specialty area;

(ii) Announcement when not certified as specialist;

(K) Advertising - Testimonials--\$250.00;

(L) Improper Use of Trade Name--\$500.00;

(M) No Prosthetic Identification--\$250.00.

(3) If the Respondent fails to pay or appeal the administrative penalty by the due date, the penalty amount will double, not to exceed the statutory maximum penalty for each violation.

The provisions of this §107.202 adopted to be effective February 11, 2003, 28 TexReg 1178; amended to be effective May 10, 2004, 29 TexReg 4474; amended to be effective February 2, 2010, 35 TexReg 631.

§107.203. Aggravating and Mitigating Factors.

(a) Aggravating Factors. In any disciplinary action, the following may be considered as aggravating factors that warrant more severe or restrictive action by the Board. A Board Order may include a finding of fact on each applicable aggravating factor. Aggravating factors may include:

- (1) harm to one or more patients;
- (2) the severity of patient harm;
- (3) one or more violations that involve more than one patient;
- (4) economic harm to any individual or entity and the severity of such harm;
- (5) increased potential for harm to the public;
- (6) attempted concealment of the act constituting a violation;
- (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation;
- (8) prior similar violations;
- (9) previous disciplinary action by the Board, any government agency, peer review organization, or health care entity;
- (10) violation of a Board Order; or
- (11) other relevant circumstances increasing the seriousness of the misconduct.

(b) Mitigating Factors. In any disciplinary action, the following may be considered as mitigating factors that warrant less severe or restrictive action by the Board. The licensee shall have the burden to present evidence regarding any mitigating factors that may apply in the particular case. A Board Order may include a finding of fact on each applicable mitigating factor:

- (1) self-reported and voluntary admissions of violation(s);

(2) implementation of remedial measures to correct or mitigate harm from the violation(s);

(3) acknowledgment of wrongdoing and willingness to cooperate with the Board, as evidenced by acceptance of an Agreed Order;

(4) rehabilitative potential;

(5) prior community service and present value to the community;

(6) other relevant circumstances reducing the seriousness of the misconduct; or

(7) other relevant circumstances lessening responsibility for the misconduct.

The provisions of this §107.203 adopted to be effective September 14, 2010, 35 TexReg 8343.

§107.204. Remedial Plans.

(a) The board may issue and establish the terms of a non-disciplinary remedial plan to resolve the investigation of a complaint.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

(C) a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) A remedial plan is public information.

The provisions of this §107.204 adopted to be effective December 10, 2013, 38 TexReg 8832.

§107.300. Registration of Non-Profit Corporations Authorized To Hire Dentists.

(a) The State Board of Dental Examiners will approve and certify any health organization or other organization qualified to contract with or employ

dentists upon submission of an application meeting the following requirements:

(1) A written request to the Board by the organization's chief executive officer will suffice as the application;

(2) The following documentation shall be submitted:

(A) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(B) written proof of a determination by the Internal Revenue Service that the organization is tax exempt under the Internal Revenue Code pursuant to §501(c)(3); and

(C) either written proof that the organization is:

(i) organized and operated as a migrant, community or homeless health center under the authority of and in compliance with 42 United States Code §254(b) or (c), or §256, or a federally qualified health center under 42 United States Code §1396d(1)(2)(B); or

(ii) written proof that the organization provides services at no fee or a reduced fee to underserved populations; or

(iii) written proof that the organization will hire dentists to staff a clinic that provides services primarily to persons having AIDS or the human immunodeficiency virus.

(b) For purposes of this rule, the terms "reduced fee" and "underserved populations" have the following meanings:

(1) Reduced fee--A fee that is less than that charged by other dental service providers in the area for the same service; or fees that are equal to or less than those provided by Medicaid for a service.

(2) Underserved populations--Individuals whose income, or individuals from families earning income that is below the federal poverty guidelines as established by the federal government.

(c) The Board may refuse to approve and certify or may revoke an approval or certification if in the Board's determination a health organization is established, organized, or operated in contravention of or with the intent to circumvent any of the provisions of the Dental Practice Act.

The provisions of this §107.300 adopted to be effective March 18, 1997, 22 TexReg 2492; amended to be effective December 3, 1997, 22 TexReg 11677.

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

§108.1. Professional Responsibility. A licensed dentist shall conduct his practice on the highest plane of honesty, integrity, and fair dealing. In order to safeguard the dental health and welfare of the public and the dentist-patient relationship and fix professional responsibility for dental services, no dentist or any other licensee or certificate holder of the Board shall:

(1) circumvent or attempt to circumvent any provision of the Texas Dental Practice Act or any rule, regulation, or order of the Board;

(2) participate, directly or indirectly in any plan, scheme, or arrangement attempting or having as its purpose or result the evasion of any provision of the Texas Dental Practice Act or any rule, regulation, or order of the Board;

(3) fail to exercise reasonable diligence to prevent partners, associates, and employees from engaging in conduct which would violate any provisions of the Texas Dental Practice Act or any rule, regulation, or order of the Board;

(4) permit or allow himself, his practice of dentistry, his professional identification, or his services to be used or made use of, directly or indirectly, or in any manner whatsoever, so as to create or tend to create the opportunity for the unauthorized or unlawful practice of dentistry by any person, firm, or corporation or for the practice of dentistry in violation of any provision of the Texas Dental Practice Act or any rule, regulation, or order of the Board;

(5) associate with or permit or allow the use of a dentist's name, professional identification, office, or practice in any business, commercial, or mercantile venture, project, or enterprise which the dentist or licensee knows or by the exercise of reasonable diligence should have known is engaged in acts, practices, or omissions which violate any provision of the Texas Dental Practice Act or any rule, regulation, or order of the Board;

(6) divide, share, split, or allocate, either directly or indirectly, any fee for dental services, appliances, or materials with another dentist or with a physician, except upon a division of services or responsibility and with the prior knowledge and approval of the patient; provided, however, this section shall not be construed to prohibit partnerships for the practice of dentistry.

(7) provide prescriptions for any medications to patients of other dentists, who are part of an after hours call agreement with the license holder, without first taking steps to determine that the individual is in fact a patient of the other dentist. Such steps shall include determination of patient's basic medical history,

including name, when last seen by patient's doctor, service performed and prescriptions written, if any.

The provisions of this §108.1 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.2. Fair Dealing.

(a) The dentist has special knowledge which a dental patient does not have; therefore, to avoid misunderstanding, the dentist shall advise a patient, before beginning treatment, of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

(b) Such advice shall include, at a minimum:

(1) the nature and extent of the treatment needed by such patient;

(2) the approximate time required to perform the recommended dental treatment and services;

(3) the terms and conditions of the payment of his fee; and

(4) any further or additional service or returns by the patient or adjustments, repair, or consultation and the time within which this shall occur.

(c) On the written request of a patient, the licensed dentist shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. For this rule, the term "plain language" means language that avoids terms of art or usage of words having specialized meaning in a context typically understood only by health care professionals.

(d) Neither the dentist nor his employee(s) shall mislead dental patients as to the gravity or lack thereof of such patient's dental needs.

(e) A dentist shall not flagrantly or persistently overcharge, overdiagnose, or overtreat a patient. For this rule the meaning of the term "overcharge" includes, but is not limited to, collecting or attempting to collect a fee without reasonable justification for any element of dental services provided to a patient that is in excess of the fee the dentist ordinarily charges to others for the same service.

(f) A dentist may not employ an auxiliary to perform any dental procedure which he cannot personally perform.

The provisions of this §108.2 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.3. Consumer Information.

(a) A Texas dentist practicing dentistry in Texas shall notify dental patients that complaints concerning dental services can be directed to the Board by providing the name, mailing address, and telephone numbers of the Board. Such notification must be accomplished by one or more of the following three methods:

(1) On a sign prominently displayed in the place of business of an individual or entity regulated under the Dental Practice Act; or,

(2) On each registration form, application, brochure, or written contract for services of an individual or entity regulated under the Dental Practice Act; or,

(3) in a bill of service provided by an individual or entity regulated under the Dental Practice Act.

(b) Signs, if utilized for such notification, may be obtained from the Board office at cost. Signs shall be exhibited in the dental office in plain view of patients.

(c) Unless the sign provided by the Board is utilized, the following requirements shall be met in order to comply with this rule:

(1) Lettering size shall be a minimum of 10-point;

(2) Lettering shall be in black, or blue-black ink;

(3) All lettering shall be legible;

(4) Signs not obtained from the Board shall be a minimum of 5 x 7 inches in size.

The provisions of this §108.3 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.4. Names of Dentists.

(a) Each dental office shall post at or near the entrance of the office the name of, each degree received by, and each school attended by each dentist practicing in the office.

(b) A dentist shall practice only under his or her own name, a company name or a trade name as set forth in Section 259.003 of the Occupations Code. If a dentist uses a trade name, or a company name, in his or her practice then each patient shall be given the name of the treating dentist in writing, either prior to or after each office visit.

(c) Only the names of the dentists who are actually engaged in the practice of their profession at a particular location may be used.

(d) The name of a deceased or retired dentist shall not be used at such location more than one (1) year after the death or retirement of the dentist.

(e) The name of a dentist who transfers his or her practice to another dentist may not be used by the acquiring dentist more than forty (40) days after such transfer.

(f) If the names of auxiliary personnel, such as dental hygienists, dental assistants, etc., are displayed in any manner, the auxiliary personnel must be clearly identified by title, along with the name of the supervising dentist.

The provisions of this §108.4 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.5. Patient Abandonment.

(a) A dentist, without reasonable cause, shall not abandon a dental patient. Once a dentist has undertaken a course of treatment, the dentist, absent reasonable cause, shall not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. A dentist shall exercise the level of care necessary to prevent jeopardizing the patient's oral health during this process.

(b) Under this section, a dentist shall give a minimum of 30 days written notice of his/her intent to discontinue undertaken treatment. Notice shall be either hand-delivered to the patient or sent via certified mail, return receipt requested to the patient's last known address, with the dentist retaining a copy of the notice letter in the patient's file along with proof of service. Adequate notice shall include the following:

(1) a short description of the patient's current status, including the patient's current diagnosis and a summary of the patient's current treatment plan;

(2) a short description of the patient's present and future needs;

(3) an explanation regarding the consequences of non-treatment;

(4) a recommendation that the patient continue care with another dentist; and

(5) a clear statement emphasizing that the dentist is available to provide any emergency treatment necessary to prevent patient harm during the 30-day period.

(c) A dentist shall remain reasonably available to render any emergency treatment necessary under (b)(5) of this section for up to 30 days from the date of such notice.

The provisions of this §108.5 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective April 14, 2002, 27 TexReg 2826.

§108.6. Report of Patient Death or Injury Requiring Hospitalization. A dentist must submit a written report to the SBDE as provided below:

(1) The death of a dental patient which may have occurred as a consequence of the receipt of dental services from the reporting dentist must be reported within 72 hours of the death, or such time as the dentist becomes aware or reasonably should have become aware of the death;

(2) The hospitalization of a dental patient, as a possible consequence of receiving dental services from the reporting dentist, must be reported within 30 days of the hospitalization or such time as the dentist becomes aware of or reasonably should have become aware of the hospitalization. For purposes of this section, "hospitalization" shall be defined as an examination at a hospital or emergency medical facility that results in an

in-patient admission for the purpose(s) of treatment and/or monitoring.

(3) In the evaluation of sedation/anesthesia morbidity or mortality, the SBDE shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure.

The provisions of this §108.6 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective July 10, 2001, 26 TexReg 5001; amended to be effective September 16, 2001, 26 TexReg 6888; amended to be effective February 20, 2005, 30 TexReg 716.

§108.7. Minimum Standard of Care, General. Each dentist licensed by the State Board of Dental Examiners and practicing in Texas shall conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstance. Further, each dentist:

(1) Shall maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist).

(2) Shall maintain and review an initial medical history and perform limited physical evaluation for all dental patients to wit:

(A) The initial medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list", for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstances would so do.

(B) The initial limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient's medical condition or history indicate such a need.

(3) Shall obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated.

(4) Shall, for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order.

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience in the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) Shall successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross.

(6) Should maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient if the patient is a minor, or a legal guardian of the patient if the patient has been adjudicated incompetent to manage the patient's personal affairs. Such consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, and such consent should disclose risks or hazards that could influence a reasonable person in making a decision to give or withhold consent.

(7) Shall safeguard patients against avoidable infections as required by this chapter.

(8) Shall not be negligent in the provision of dental services.

(9) Shall use proper diligence in the dentist's practice.

(10) Shall maintain a centralized inventory of drugs.

(11) Shall report patient death or hospitalization as required by this chapter.

(12) Shall abide by sanitation requirements as required by this chapter.

(13) Shall abide by patient termination requirements as required by this chapter.

The provisions of this §108.7 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective December 30, 2001, 26 TexReg 10569; amended to be effective May 10, 2004, 29 TexReg 4474; amended to be effective September 14, 2010, 35 TexReg 8344.

§108.8. Records of the Dentist.

(a) The term dental records includes, but is not limited to: identification of the practitioner providing treatment; medical and dental history; limited physical examination; oral pathology examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, and

impressions, if applicable; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

(b) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of the diagnoses made and the treatments performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Records shall be kept for a period of not less than five years. Records must include documentation of the following:

- (1) Patients name;
- (2) Date of visit;
- (3) Reason for visit;
- (4) Vital signs, including but not limited to blood pressure and heart rate when applicable in accordance with §108.7 of this title.

(5) If not recorded, an explanation why vital signs were not obtained.

(c) Further, records must include documentation of the following when services are rendered:

- (1) Written review of medical history and limited review of medical exam;
- (2) Findings and charting of clinical and radiographic oral examination:

(A) Documentation of radiographs taken and findings deduced from them, including radiograph films or digital reproductions.

(B) Use of radiographs, at a minimum, should be in accordance with ADA guidelines.

(C) Documentation of the findings of a tactile and visual examination of the soft and hard tissues of the oral cavity;

- (3) Diagnosis(es);
- (4) Treatment plan, recommendation, and options;
- (5) Treatment provided;
- (6) Medication and dosages given to patient;
- (7) Complications;
- (8) Written informed consent that meets the provisions of §108.7(6) of this title;

(9) The dispensing, administering, or prescribing of all medications to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs;

(10) All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act;

(11) Confirmable identification of provider dentist, and confirmable identification of person making record entries if different from provider dentist;

(12) When any of the items in paragraphs (1) - (11) of this subsection are not indicated, the record must include an explanation why the item is not recorded.

(d) Dental records are the sole property of the dentist who performs the dental service. However, ownership of original dental records may be transferred as provided in this section. Copies of dental records shall be made available to a dental patient in accordance with this section.

(e) A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records.

(1) A dentist who continues to maintain the dental records belonging to him or her shall maintain the dental records in accordance with the laws of the State of Texas and this chapter.

(2) A dentist who enters into a written transfer of records agreement shall notify the State Board of Dental Examiners in writing within fifteen (15) days of a records transfer agreement. The notification shall include, at a minimum, the full names of the dentists involved in the agreement, include the locations involved in the agreement, and specifically identify what records are involved in the agreement. The agreement shall transfer ownership of the records. A transfer of records agreement may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(3) A dentist who enters into a records maintenance agreement shall notify the State Board of Dental Examiners within fifteen (15) days of such event. The notification shall include the full names of the dentists involved in the agreement, the locations involved in the agreement, and shall identify what records are involved in the agreement. A maintenance agreement shall not transfer ownership of the dental records, but shall require that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners. The agreement shall require that the dentist(s) performing the dental service(s) recorded in the records have access to and control of the records for purposes of copying and recording. The dentist transferring the records in a records maintenance agreement shall maintain a copy of the records involved in the records maintenance agreement. Such an

agreement may be made by written agreement by the parties at any time in an employment or other working relationship between a dentist and another entity. A records maintenance agreement may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(f) Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act. Copies of dental records submitted to the Board on demand of the officers, agents, or employees of the Board shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays and illegible copies of patient records submitted to the Board shall not fulfill the requirements of this section.

(g) A dentist shall furnish copies of dental records to a patient who requests his or her dental records. At the patient's option, the copies may be submitted to the patient directly or to another Texas dental licensee who will provide treatment to the patient. Requested copies, including radiographs, shall be furnished within 30 days of the date of the request. The copies may be withheld until copying costs have been paid. Records shall not be withheld based on a past due account for dental care or treatment previously rendered to the patient. Copies of dental records submitted in accordance with a request under this section shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays shall not fulfill the requirements of this section.

(1) A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than \$25 for the first 20 pages and \$0.15 per page for every copy thereafter.

(2) Fees for radiographs, which if copied by an radiograph duplicating service, may be equal to actual cost verified by invoice.

(3) Reasonable costs for radiographs duplicated by means other than by a radiograph duplicating service shall not exceed the following charges:

(A) a full mouth radiograph series: \$15.00;

(B) a panoramic radiograph: \$15.00;

(C) a lateral cephalometric radiograph: \$15.00;

(D) a single extra-oral radiograph: \$5.00;

(E) a single intra-oral radiograph: \$5.00.

(4) State agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives.

The provisions of this §108.8 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective December 30, 2001, 26 TexReg 10570; amended to be effective February 2, 2010, 35 TexReg 634; amended to be effective September 14, 2010, 35 TexReg 8344; amended to be effective June 10, 2012, 37 TexReg 4043; amended to be effective May 29, 2013, 38 TexReg 3346.

§108.9. Dishonorable Conduct. The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license--obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs;

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics including self-prescription of drugs;

(D) grossly over prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances;

(E) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to or for a person who is not his or her dental patient; or

(F) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose, whether or not the person is a dental patient.

(5) Assisting another in engaging in the unauthorized practice of dentistry or dental hygiene--holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice

dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management.

(6) Failure to comply with applicable laws, rules, regulations, and orders--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order.

(7) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(8) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(9) Failure to comply with Medicaid, insurance, or other regulatory laws--knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or

(B) regulates the business of insurance.

(10) Improper delegation--improperly delegates any task to any individual who is not permitted to perform the task by law, this chapter, or practice restrictions imposed by Board Order.

(11) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

The provisions of this §108.9 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective November 27, 2005, 30 TexReg 7743; amended to be effective September 14, 2010, 35 TexReg 8346.

§108.10. Notification of Change of Information. Each dentist licensed with the Board shall notify the Board within sixty (60) days of any:

(1) change of address of the licensee's place of business;

(2) change of the licensee's employer; or

(3) change in the licensee's mailing address.

The provisions of this §108.10 adopted to be effective February 2, 2010, 35 TexReg 634.

§108.11. Display of Registration.

(a) A dentist or dental hygienist shall display a current registration certificate in each office where the dentist or dental hygienist provides dental services.

(b) No dentist or dental hygienist shall provide treatment for a patient without placing the current registration certificate on exhibit.

(c) When a dentist or dental hygienist provides dental services at more than one location, a duplicate registration certificate may be displayed. The duplicate may be obtained from the State Board of Dental Examiners for a fee set by the Board.

(d) A dentist or dental hygienist may practice without displaying the person's current registration certificate as required by this section for not more than 30 days after the person receives written confirmation from the board that the person's original license was issued.

The provisions of this §108.11 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective November 27, 2005, 30 TexReg 7743.

§108.13. Practice of Dentistry on Certain Children.

(a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment of the child.

(b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

The provisions of this §108.13 adopted to be effective December 10, 2013, 38 TexReg 8833.

SUBCHAPTER B. SANITATION AND INFECTION CONTROL

§108.20. Purpose. The purpose of rules contained in this subchapter is to establish proper sterilization, disinfection, and other infection control procedures in the practice of dentistry. Failure of a dental health care worker to practice and maintain these procedures constitutes a significant danger to public health and safety. Any violation of these rules regarding infection control in this subchapter and other applicable statutes, rules, or regulations that may be incorporated by reference herein or that may apply otherwise through federal or state mandate or regulation shall be considered a failure to safeguard the public interest and thus shall constitute, at a minimum, negligence in the performance of dental services and failure to use proper diligence in the conduct of a dental practice, pursuant to Section 263.002, Dental Practice Act.

The provisions of this §108.20 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.21. Requirements. A person practicing dentistry in the State of Texas must maintain the entire dental office in a clean and sanitary condition, and such premises shall be maintained in full compliance with all health requirements of the city or county, or both, in which such office or premises is located and in conformity with the health laws of the State of Texas; further, a dentist shall provide restroom facilities for staff and patients and use properly sterilized instruments and clean supplies.

The provisions of this §108.21 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.22. Access to Dental Office. A person practicing dentistry in the State of Texas shall, upon demand by the officers, agents or employees of the State Board of Dental Examiners acting pursuant to a sanitation complaint, grant immediate access to the entire dental office premises to those persons making such demand. Failure to grant such access may subject a practitioner to temporary license suspension, pursuant to Section 263.004 of the Dental Practice Act.

The provisions of this §108.22 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.23. Definitions. The following words or terms, when used in Subchapter B, Sanitation and Infection Control, shall have the following meanings, unless the context clearly indicates otherwise. The definitions of the terms health care worker, exposure-prone, invasive-procedure, and universal precautions, as those terms are defined in the Texas Health and Safety Code, §85.202, as amended Acts 72nd Legislature, First Called Session, Section 36, Chapter 41 (1991), (hereinafter referenced as "THSC, §...") and guidelines from the Centers for Disease Control, ("CDC") as applied to the practice of dentistry, are incorporated herein by reference.

(1) Barrier techniques--the use of protective items against infection-transmission during any intraoral or invasive procedure to include appropriate gloves for the procedure performed. This definition shall include protective eye wear and nasal/oral masks when "splash, spatter, or aerosol" of body fluids is possible or expected.

(2) Disinfection--the partial elimination of active growth stage bacteria and the inactivation of some viruses. The potential for infections remains after disinfection, including infection with *M. tuberculosis*, hepatitis A virus (HAV) and hepatitis B virus (HBV). The human immunodeficiency virus (HIV) may also remain active following disinfection.

(3) Sterilization--a process by which all forms of life within a defined environment are completely destroyed.

The provisions of this §108.23 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.24. Required Sterilization and Disinfection.

(a) Sterilization is required for all surgical and other instruments that may be used intraorally or extraorally, where these instruments may be used invasively or in contact with or penetration of soft tissue, bone or other hard tissue. Other nonsurgical instruments, such as plastic instruments, that may come into contact with tissue must be disinfected with an American Dental Association-registered solution that is tuberculocidal.

(b) All instruments subject to sterilization must undergo at least one of the following procedures:

- (1) Steam autoclave
- (2) Chemical Vapor
- (3) Dry-heat oven
- (4) Ethylene oxide

(5) Chemical sterilant (used in dilution amounts and time periods according to manufacturer's recommendations or accepted OSHA standards). Sterilization equipment and its adequacy shall be tested and verified in accord with American Dental Association (ADA) recommendations.

(c) Following a dental procedure, all instruments and operatory equipment that may have become contaminated with blood, saliva, or tissue debris must be, at a minimum, disinfected and preferably sterilized by a CDC or ADA-approved method before utilization again for patient care.

(d) Prior to sterilization, all instruments must be free of any visible debris and must be either scrubbed thoroughly with a detergent and water solution or debrided in an ultrasonic device containing cleaning solution.

(e) Oral prosthetic appliances and devices from a dental laboratory must be washed with a detergent and water solution, rinsed, disinfected, and rinsed before the appliance or device is placed into patient's mouth.

(f) Disposable (non-resterilizable) items, including but not limited to gloves, needles, intravenous fluids, intravenous administration tubing, intravenous catheters/needles, and like items, shall not be used in the treatment of more than one patient.

(g) All items contaminated by body fluids during patient care must be treated as biohazardous material. Before extracted teeth are returned to a patient or other party, the teeth must be rendered non-biohazardous. All contaminated single-use items must be disposed of through established OSHA guidelines for such disposal. Teeth or tissue fragments to be used for microscopic, testing, or educational purposes must be sterilized prior to use. Such tissues must be handled and stored as biohazardous material until sterilization is performed.

(h) When it is necessary to send items (including but not limited to impressions, bites, working casts, prosthetic appliances or devices) to a dental laboratory for fabrication on repair, those items that are contaminated by body fluids must be considered biohazardous. Before such items are delivered to the dental laboratory or technician, they must be rendered non-biohazardous according to established OSHA guidelines.

(i) When it is necessary to return items (including but not limited to impressions, bites, working casts, prosthetic appliances or devices) to a dental office from a dental laboratory which item has been fabricated or repaired, those items that have been potentially contaminated shall be rendered non-biohazardous. Before return to the dentist by the dental laboratory or technician, the item must be rendered non-biohazardous according to established OSHA guidelines.

The provisions of this §108.24 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.25. Dental Health Care Workers.

(a) All dental health care workers shall comply with the universal precautions, as recommended for dentistry by the Centers for Disease Control and required by THSC, §§85.202, et seq, 1991, as amended, in the care, handling, and treatment of patients in the dental office or other setting where dental procedures of any type may be performed.

(b) All dental health care workers who have exudative lesions or weeping dermatitis shall refrain from contact with equipment, devices, and appliances that may be used for or during patient care, where such contact holds potential for blood or body fluid contamination, and shall refrain from all patient care and contact until condition(s) resolves unless barrier techniques would prevent patient contact with the dental health care worker's blood or body fluid.

(c) A dental health care worker(s) who knows he/she is infected with HIV or HBV and who knows he/she is HbeAg positive shall report his/her health status to an expert review panel, pursuant to provisions of THSC, §§85.204, et seq, 1991, as amended.

(d) A dental health care worker who is infected with HIV or HBV and is HbeAg positive shall notify a prospective patient of the dental health care worker's seropositive status and obtain the patient's consent before the patient undergoes an exposure-prone procedure performed by the notifying dental health care worker.

(e) All dental care workers should receive a tuberculin skin test at least annually, or if it is discovered they have been exposed. The Board encourages compliance with the guidelines for tuberculosis testing and control recommended by the Centers for Disease Control and Prevention and the

Texas Department of Health, or their successor agencies.

The provisions of this §108.25 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective September 21, 2004, 29 TexReg 9005.

SUBCHAPTER D. MOBILE DENTAL FACILITIES

§108.40. Permit Required.

(a) Beginning September 1, 2001, every mobile dental facility, and, except as provided herein, every portable dental unit operated in Texas by any entity must have a permit as provided by this title (relating to Mobile Dental Facilities).

(b) Licensees who do not have a permit for a portable dental unit or who are employed by a dental organization not having a portable dental unit permit may provide dental services through use of dental instruments and equipment taken out of a dental office without a permit if;

(1) the service is provided as emergency treatment;

(2) a patient of record of the licensee or organization is treated outside of the dental office;

(3) treatment is provided to residents of nursing homes or convalescent facilities; or

(4) treatment is provided without charge to patients or to any third party payer, so long as such treatment is not provided on a regular basis.

(5) anesthesia/sedation services are provided and the licensee is permitted to provide portable anesthesia services under the provisions of Rule 108.33 of this title (relating to Sedation/Anesthesia Permit); or

(6) the service is provided in an office of another licensed dentist.

The provisions of this §108.40 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.41. Definitions. The following words and terms, when used in Subchapter D, Mobile Dental Facilities, shall have the following meanings, unless the context clearly indicates otherwise;

(1) Mobile Dental Facility--any self-contained facility in which dentistry will be practiced which may be moved, towed, or transported from one location to another.

(2) Portable Dental Unit--any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location including, but not limited to, patients' homes, schools, nursing homes, or other institutions.

(3) Permit Holder--a licensed Texas dentist or an organization authorized by the Dental Practice Act to employ licensed Texas dentists to whom the permit is issued as provided by this title (relating to Mobile

Dental Facilities and Portable Dental Units), or an organization not otherwise included herein that demonstrates to the SBDE that it is an appropriate entity to provide mobile or portable dental services.

(4) Session--a period of time during which personnel associated with a permitted facility or unit are available to provide dental services at a location.

The provisions of this §108.41 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.42. Obtaining a Permit.

(a) A licensed Texas dentist, an organization authorized by the Dental Practice Act or other organization as defined by rule 108.41 (3) of this title (relating to Definitions) and approved by the SBDE wishing to operate a mobile dental facility or a portable dental unit, shall apply to the State Board of Dental Examiners (SBDE) for a permit on a form provided by the Board and pay an application fee in an amount set by the Board. A governmental or educational entity may obtain a single permit, respectively, for all facilities; or all units listed on an application.

(b) A completed application form submitted to the SBDE with all questions answered will be reviewed and if all the requirements listed in this section are met, a permit will be issued. All applications must include:

(1) an address of record that is not a Post Office Box; and,

(2) the name and address of the permit holder.

(c) All applicants except governmental and higher educational entities must also include:

(1) the name and address, and when applicable, the license number of each dentist, dental hygienist, laboratory technician, and dental assistant associated with the facility or unit for which a permit is sought;

(2) a copy of a written agreement for the emergency follow-up care for patients treated in the mobile dental facility, or through a portable dental unit, and such agreement must include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

(3) a statement that the mobile dental facility or portable dental unit has access to communication facilities which will enable dental personnel to contact assistance as needed in the event of an emergency;

(4) a statement that the mobile dental facility or portable dental unit conforms to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction standards, including required or suitable access for disabled individuals, sanitation, and zoning;

(5) a statement that the applicant possesses all applicable county and city licenses or permits to operate the facility or unit;

(6) either a statement that the unit will only be used in dental offices of the applicant or other licensed dentists, or a list of all equipment to be contained and used in the mobile dental facility or portable dental unit, which must include:

(A) dental treatment chair;

(B) a dental treatment light;

(C) when radiographs are to be made by the mobile dental facility or portable dental unit, a stable portable radiographic unit that is properly monitored by the authorized agency;

(D) when radiographs are to be made by the mobile dental facility or portable dental unit, a lead apron which includes a thyroid collar;

(E) a portable delivery system, or an integrated system if used in a mobile dental facility

(F) an evacuation unit suitable for dental surgical use; and

(G) a list of appropriate and sufficient dental instruments including explorers and mouth mirrors, and infection control supplies, such as gloves, face masks, etc., that are on hand.

The provisions of this §108.42 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.43. Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units.

(a) A permit holder is required to operate a permitted Mobile Dental Facility or Portable Dental Unit in compliance with all state statutes and regulations. Further, all permit holders shall:

(1) in writing, notify the SBDE of a change in any address required in Rule 108.42 (b)(1) of this title (relating to Obtaining a Permit) within 60 days of the change;

(2) prominently display all dental and dental hygienist licenses and current registration certificates, Mobile Dental Facilities or Portable Dental Unit permits, or copies of permits if one permit is issued for multiple facilities or units, a consumer information sign as described in Rule 108.5 of this title (relating to Consumer Information) in compliance with the Dental Practice Act and/or the Rules and Regulations of the SBDE, provided, however, that a licensee may display a duplicate registration certification obtained from the SBDE;

(3) maintain, in full compliance with all record-keeping requirements contained in these rules, all dental records and official records at the official address of record for the facility or unit.

(b) All permit holders except, governmental and higher education entities, shall:

(1) in writing, notify the SBDE of a change in personnel listed as required by Rule 108.42(b)(2) of this title (relating to Obtaining a Permit) within 30 days of any such change;

(2) before beginning a session at any location, arrange for;

(A) access to a properly functioning sterilization system;

(B) ready access to an adequate supply of potable water; and

(C) ready access to toilet facilities.

(3) on the 10th work day of September of each year, file with the SBDE a written report for the preceding year ending August 31, detailing the location, including a street address, the dates of each session, and the number of patients served and the types of dental procedures and quantity of each service provided; except that such written reports may exclude information concerning dental services provided to less than three individuals at a private residence;

(4) insure that all written or printed materials available from or issued by the Mobile Dental Facility or Portable Dental Unit contain the official address of record for the facility or unit;

(5) operate a Mobile Dental Facility or Portable Dental Unit only when all requirements described in Rule 108.42 of this title (related to Obtaining a Permit) are being met.

(c) A permit to operate a Mobile Dental Facility or Portable Dental Unit expires one (1) year after the issuance date, or on the date when the permit holder is no longer associated with the Mobile Dental Facility or Portable Dental Unit, whichever is first.

(d) A permit holder may renew a permit by submitting an annual application which shall include a list of all locations served during the past year, and payment of required fee.

(e) Upon cessation of operations by the Mobile Dental Facility or Portable Dental Unit, the permit holder shall notify the SBDE of the final disposition of patient records and charts.

(f) A permit to operate a Mobile Dental Facility or Portable Dental Unit is not transferable.

(g) The SBDE may cancel a permit if upon investigation and after opportunity for a hearing, a determination is made of non-compliance with the Dental Practice Act or the SBDE Rules and Regulations.

The provisions of this §108.43 adopted to be effective February 20, 2001, 26 TexReg 1494; amended to be effective July 10, 2001, 26 TexReg 5004.

SUBCHAPTER E. BUSINESS PROMOTION

§108.50. Objectives of Rules.

(a) The purpose of this subchapter is to provide guidelines for communications to the public, including

but not limited to advertising, professional communications and referral services.

(b) As professionals, dentists have the duty to communicate truthfully and without deception to the public.

(c) It is hereby declared that the sections, clauses, sentences and parts of this subchapter are severable, are not matters of mutual essential inducement, and any of them shall be removed if this subchapter would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reasons be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

The provisions of this §108.50 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.51. Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the contents clearly indicate otherwise.

(1) **Advertisements--Information** communications made directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to attract directly or indirectly any person to enter into an express or implied agreement to accept dental services or treatment related thereto. Advertising may include oral, written, broadcast and other types of communications disseminated by or at the behest of a dentist. The communications include, but are not limited to, those made to patients, prospective patients, professionals or other persons who might refer patients, and to the public at large. Advertisements include electronic media and print media.

(2) **Electronic Media--Radio, television and the Internet.**

(3) **Location Signage--Signage** adhered to the physical building at which a dental office is located or at the entry to a shopping park or parking lot that is intended as an indicator for the public to physically locate the dental office.

(4) **Patient of Record--A patient** who has been examined and diagnosed by a licensed dentist and whose treatment has been planned by a licensed dentist.

(5) **Print Media--Newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the content of which is**

disseminated by means of the printed word. "Print media" shall also include stationery and business cards.

(6) Testimonial--An attestation or implied attestation to the competence of a dentist's services or treatment.

The provisions of this §108.51 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.52. Names and Responsibilities.

(a) Disclosure of Full Name.

(1) Any person who practices dentistry under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(2) Any person who owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry, either directly or indirectly, under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(3) Any person who holds himself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of Texas under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(4) Any person who operates, manages, or is employed in any facility where dental service is rendered or conducted under any name or trade name must provide full and outward disclosure of his full name as it appears on the license or renewal certificate issued by the board, or his commonly used name.

(5) Any person who practices dentistry must display his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name, outside the primary entry of each location at which he practices dentistry.

(6) If the names of auxiliary personnel, such as dental hygienists or dental assistants, are displayed in any manner or in any advertising, the auxiliary personnel must be clearly identified by title, along with the name of a supervising dentist.

(b) Name of Practice.

(1) Each dental office shall post at or near the entrance of the office in an area visible to the public, the name of, each professional degree received by and each school attended by each dentist practicing in the office.

(2) The name of the owner shall be prominently displayed and only the names of the dentists who are engaged in the practice of the profession at a particular location shall be used.

(3) The name of a deceased or retired dentist leaving a practice shall not be used at such location more than one (1) year following departure from the practice.

(4) The name of a dentist who transfers or sells his practice to another dentist may be used by the acquiring dentist for no more than forty (40) days following the transfer. However, if the transferring dentist remains actively engaged in the practice of dentistry in the transferred practice, the acquiring dentist may continue using the name of the transferring dentist.

(5) A licensed Texas dentist, in any professional communication concerning dental services, shall include the dentist's dental degree; the words "general dentist" or "general dentistry;" or an ADA approved dental specialty if the dentist is a specialist in the field designated.

(6) A licensed Texas dentist who is also authorized to practice medicine in Texas may use the initials "M.D." or "D.O." along with the dentist's dental degree.

(c) Use of Trade Name.

(1) A dentist may practice under his or her own name, or use a corporation, company, association or trade name as provided by §259.003 of the Texas Occupations Code.

(2) A dentist practicing under a corporation, company, association or trade name shall give each patient the name and license number of the treating dentist, in writing, either before or after each office visit, upon request of a patient.

(3) An advertisement under a corporation, company, association or trade name must include prominently the name of the owner(s) and at least one dentist actually engaged in the practice of dentistry under that trade name at each location advertised. This provision does not apply to location signage.

(4) Each dentist practicing under a corporation, company, association or trade name shall file notice with the board of every corporation, company, association or trade name under which that dentist practices upon initial application for licensure and annual license renewal.

(5) Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

(d) Responsibility. The responsibility for the form and content of an advertisement offering services or goods by a dentist shall be jointly and severally that of each licensed professional who is an owner, principal, partner, or officer of the firm or entity identified in the advertisement.

The provisions of this §108.52 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.53. Fees.

(a) General. Dentists shall not represent or advertise the fees they charge in a false or misleading manner. Dentists shall state availability and price of goods, appliances or services in a clear and non-deceptive manner and include all material information to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price.

(b) Fee-Splitting. No dentist or any other licensee or registrant shall divide, share, split or allocate, either directly or indirectly, any fee for dental services, appliances, or materials with another dentist or with a physician, except upon a division of services or responsibility and with the prior knowledge and written approval of the patient.

(c) Disclosures. An advertisement which includes the price of dental services shall disclose:

(1) the professional service being offered in the advertisement;

(2) any related services which are usually required in conjunction with the advertised services and for which additional fees may be charged;

(3) a disclosure statement that the fee is a minimum fee and that the charges may increase depending on the treatment required;

(4) the dates upon which the advertised service will be available at the advertised price;

(5) when a service is advertised at a discount, the standard fee of the service and whether the discount is limited to a cash payment; and

(6) if the advertisement quotes a range of fees for a service, the advertisement shall contain all the basic considerations upon which the actual fee shall be determined.

(d) A dentist shall not:

(1) represent that health care insurance deductibles or copayments may be waived or are not applicable to dental services to be provided if the deductibles or copayments are required;

(2) represent that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(3) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;

(4) offer a discount for dental services without disclosing the total fee to which the discount will apply; and

(5) represent that services are "free" when there is remuneration by a third-party payor, including Medicaid or Medicare.

The provisions of this §108.53 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.54. Advertising of Specialties.

(a) Recognized Specialties. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas that are:

(1) recognized by a board that certifies specialists in the area of specialty; and

(2) accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) The following are recognized specialty areas and meet the requirements of subsection (a)(1) and (2) of this section:

(1) Endodontics;

(2) Oral and Maxillofacial Surgery;

(3) Orthodontics and Dentofacial Orthopedics;

(4) Pediatric Dentistry;

(5) Periodontics;

(6) Prosthodontics;

(7) Dental Public Health;

(8) Oral and Maxillofacial Pathology; and

(9) Oral and Maxillofacial Radiology.

(c) A dentist who wishes to advertise as a specialist or a multiple-specialist in one or more recognized specialty areas under subsection (a)(1) and (2) and subsection (b)(1) - (9) of this section shall meet the criteria in one or more of the following categories:

(1) Educationally qualified is a dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association.

(2) Board certified is a dentist who has met the requirements of a specialty board referenced in subsection (a)(1) and (2) of this section, and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status, or has complied with the provisions of §108.56(a) and (b) of this subchapter (relating to Certifications, Degrees, Fellowships, Memberships and Other Credentials).

(3) A dentist is authorized to use the term "board certified" in any advertising for his/her practice only if the specialty board that conferred the certification is referenced in subsection (a)(1) and (2) of this section, or the dentist complies with the provisions of §108.56(a) and (b) of this subchapter.

(d) Dentists who choose to communicate specialization in a recognized specialty area as set forth in subsection (b)(1) - (9) of this section should use "specialist in" or "practice limited to" and should limit their practice exclusively to the advertised specialty area(s) of dental practice. Dentists may also state that the specialization is an "ADA recognized specialty." At

the time of the communication, such dentists must have met the current educational requirements and standards set forth by the American Dental Association for each approved specialty. A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution. The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists as identified in subsection (b)(1) - (9) of this section.

The provisions of this §108.54 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.55. Advertising for General Dentists.

(a) A dentist whose license is not limited to the practice of an ADA recognized specialty identified under §108.54(b)(1) - (9) of this subchapter (relating to Advertising of Specialties), may advertise that the dentist performs dental services in those specialty areas of practice, but only if the advertisement also includes a clear disclosure that he/she is a general dentist.

(b) Any advertisement of any specific dental service or services by a general dentist shall include the notation "General Dentist" or "General Dentistry" directly after the name of the dentist. The notation shall be in a font size no smaller than the largest font size used to identify the specific dental services being advertised. For example, a general dentist who advertises "ORTHODONTICS" and "DENTURES" and/or "IMPLANTS" shall include a disclosure of "GENERAL DENTIST" or "GENERAL DENTISTRY" in a font size no smaller than the largest font size used for terms 'orthodontics,' 'dentures' and/or 'implants.' Any form of broadcast advertising by a general dentist (radio, television, promotional DVDs, etc) shall include either "General Dentist" or "General Dentistry" in a clearly audible manner.

(c) A general dentist is not prohibited from listing services provided, so long as the listing does not imply specialization. A listing of services provided shall be separate and clearly distinguishable from the dentist's designation as a general dentist.

(d) The provisions of this rule shall not be required for professional business cards or professional letterhead.

The provisions of this §108.55 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.56. Certifications, Degrees, Fellowships, Memberships and Other Credentials.

(a) Dentists may advertise credentials earned in dentistry so long as they avoid any communications that express or imply specialization in a recognized specialty, or specialization in an area of dentistry that is

not recognized as a specialty, or attainment of an earned academic degree.

(b) A listing of credentials shall be separate and clearly distinguishable from the dentist's designation as a dentist. A listing of credentials may not occupy the same line as the dentist's name and designation as a dentist. Any use of abbreviations to designate credentials shall be accompanied by a definition of the acronym immediately following the credential.

For example:

Jane Doe, DDS, General Dentist
FAAD, Fellow Anytown Academy of Dentistry

OR

John Doe, DDS, General Dentist
MACD, Master Anytown College of Dentists

(c) The provisions of subsection (b) of this section shall not be required in materials not intended for business promotion or public dissemination, such as peer-to-peer communications.

The provisions of this §108.56 adopted to be effective May 1, 2013, 38 TexReg 826.

§108.57. False, Misleading or Deceptive Advertising.

(a) A dentist has a duty to communicate truthfully. Professionals have a duty to be honest and trustworthy in their dealings with people. The dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists shall not misrepresent their training and competence in any way that would be false or misleading in any material respect. Dentists shall not advertise or solicit patients in any form of communication in a manner that is false, misleading, deceptive, or not readily subject to verification.

(b) Published Communications. A dental health article, message or newsletter published in print or electronic media under a dentist's byline to the public must make truthful disclosure of the source and authorship of the publication. If compensation was made for the published communication, a disclosure that the communication is a paid advertisement shall be made. If the published communication fails to make truthful disclosure of the source, authorship and if compensation was made, that the communication is a paid advertisement, the dentist is engaged in making a false or misleading representation to the public in a material respect. If the published communication is

designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.

(c) Examples. In addition to the plain and ordinary meaning of the provision set forth throughout these guidelines, additional examples of advertisements that may be false, misleading, deceptive, or not readily subject to verification include but are not limited to:

(1) making a material misrepresentation of fact or omitting a fact necessary to make a statement as a whole not materially misleading;

(2) intimidating or exerting undue pressure or undue influence over a prospective patient;

(3) appealing to an individual's anxiety in an excessive or unfair way;

(4) claiming to provide or perform dental work without pain or discomfort to the patient;

(5) implying or suggesting superiority of materials or performance of professional services;

(6) comparing a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(7) communicating an implication, prediction or suggestion of any guarantee of future satisfaction or success of a dental service or otherwise creating unjustified expectations concerning the potential result of dental treatment. The communication of a guarantee to return a fee if the patient is not satisfied with the treatment rendered is not considered false, misleading, deceptive or not readily subject to verification under this rule;

(8) containing a testimonial from a person who is not a patient of record or that includes false, misleading or deceptive statements, or which is not readily subject to verification, or which fails to include disclosures or warnings as to the identity and credentials of the person making the testimonial;

(9) referring to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;

(10) causing confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(11) representing in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;

(12) failing to make truthful disclosure of the source and authorship of any message published under a dentist's byline;

(13) communicating an implication or suggestion that a service is free or discounted when the

fee is built in to a companion procedure provided to the patient and charged to the patient; and

(14) communicating statistical data, representations, or other information that is not subject to reasonable verification by the public.

(d) Photographs or other representations may be used in advertising of actual patients of record of the licensee. Written patient consent must be obtained prior to the communication of facts, data, or information which may identify the patient. The advertising must include language stating "Actual results may vary."

(e) Advertising or promotion of products from which the dentist receives a direct remuneration or incentive is prohibited unless the dentist fully and clearly discloses that he is a paid spokesman for the product, or the dentist fully and clearly discloses that he is the inventor or manufacturer of the product.

(f) Any and all advertisements are presumed to have been approved by the licensee named therein.

The provisions of this §108.57 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.58. Solicitation, Referrals and Gift Schemes.

(a) This rule prohibits conduct which violates §§102.001 - 102.011 and §259.008(8), of the Texas Occupations Code. A licensee shall not offer, give, dispense, distribute or make available to any third party or aid or abet another so to do, any cash, gift, premium, chance, reward, ticket, item, or thing of value for securing or soliciting patients. A licensee may offer, give, dispense, distribute or make available directly to a potential patient, a non-cash gift valued at no more than ten dollars to secure or solicit the potential patient.

(b) This rule shall not be construed to prohibit a licensee from offering, giving, dispensing, distributing or making available to any patient of record any cash premium, chance, reward, ticket, item or thing of value for the continuation of that relationship as a patient of that licensee. The cash premium, chance, reward, ticket, item or thing of value cannot be for the purpose of soliciting new patients.

(c) This rule shall not be construed to prohibit remuneration for advertising, marketing, or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is set in advance, is consistent with the fair market value of the services, and is not based on the volume or value of any patient referrals.

The provisions of this §108.58 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.59. Website Disclosures. Dental practice websites should clearly disclose:

(1) ownership of the website;

(2) services provided;

(3) office addresses and contact information;
and

(4) licensure and qualifications of dentist(s)
and associated health care providers.

The provisions of this §108.59 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.60. Record Keeping of Advertisements.

(a) Retention of broadcast, print and electronic advertising. A pre-recorded copy of all broadcast advertisements, a copy of print advertisements and a copy of electronic advertisements shall be retained for four years following the final appearance or communication of the advertisement. In addition, the dentist shall document the date the dentist discovered that he or she had placed a false or misleading advertisement, as well as the date and substance of all corrective measures the dentist took to rectify false or misleading advertisements. The dentist shall maintain documentation of all corrective measures for four years following the most recent appearance or communication of the advertisement which the dentist discovered was inaccurate.

(b) The advertising dentist shall be responsible for making copies of the advertisement available to the board if requested.

The provisions of this §108.60 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.61. Grounds and Procedures for Disciplinary Action for Advertising Violations.

(a) In accordance with the Board's statutory and regulatory authority authorizing disciplinary action and denial of licensure for advertising violations as set forth in this subchapter, the Board may refuse to issue or renew a license, may suspend or revoke a license, may issue a warning or reprimand, restrict or impose conditions on the practice of a licensee or applicant for licensure. "Advertising violations" consist of expressions explicitly or implicitly authorized by a licensee, or applicant for licensure, which are false or misleading as otherwise referenced in this subchapter.

(b) A licensee or applicant for licensure explicitly or implicitly authorizes advertising when the individual permits or fails to correct statements that are false or misleading. Failure to attempt to retract or otherwise correct advertising violations as directed by the Board may constitute a willful violation of these provisions and may be a separate and distinct independent violation of the Board's statutory or regulatory authority. A willful violation of the Board's directive, may subject the licensee or applicant to disciplinary action, nonrenewal or denial of licensure.

(c) When determining whether an "advertising violation" has occurred, the Board shall proceed in accordance with due process and its statutory and

regulatory provisions which govern investigations and contested case proceedings.

The provisions of this §108.61 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.62. Awards, Honors and Recognitions.

(a) A licensee may publicize the receipt of a professional award, honor, recognition, or rating in an advertisement or otherwise, if the publication is not false, misleading, or deceptive, and is subject to reasonable verification by the public. Any advertisement must comply with all laws and rules governing advertisement by licensees.

(b) The publication of an award, honor, recognition or rating must reflect truth, state the specific year or time period of receipt and clearly name the awarding organization or entity.

(1) Proper: John Doe, DDS - Included in Anytown Quarterly's Fall 2012 Top Dentists

(2) Improper: John Doe, DDS - Top Dentist

(3) Proper: John Doe, DDS - Selected as Anytown's 2012 Dentist of the Year by the Anytown

(4) Improper: John Doe, DDS - Dentist of the Year

(c) The publication must state the licensee's receipt of an award, honor, recognition or rating as inclusion or selection in a listing of other licensees, if applicable.

(1) Proper: John was selected for inclusion in 2012 Anytown Yearly's Super Dentists List

(2) Improper: John is an Anytown Super Dentist

(d) The publication may include the trademark or logo of the award, honor, recognition or rating, so long as the advertisement conforms to all laws and rules governing advertisement by licensees.

(e) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the licensee compensated a third party for the inclusion of the licensee's name in the survey, ballot, or poll that determined the recipients of the award, honor, recognition or rating. This does not preclude licensees from purchasing advertisements to communicate the receipt of an award, honor, recognition or rating.

(f) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the publication imputes an individual licensee's selection or inclusion to an entire practice, clinic or office. An advertisement for an entire dental practice, clinic or office at which more than one licensee engages in the practice of dentistry, must clearly denote the specific licensees within in the practice who received the award, honor, recognition or rating.

The provisions of this §108.62 adopted to be effective May 1, 2013, 37 TexReg 9637.

§108.63. Advertisement and Education by Unlicensed Clinicians.

(a) Any advertisement placed by a person who is not domiciled and located in this state and subject to the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

(b) Licensees of other jurisdictions may be permitted to demonstrate their professional technique and ability on live patients at scientific and clinical meetings upon prior approval by the State Board of Dental Examiners. The State Board of Dental Examiners must approve any and all courses, seminars, clinics, or demonstrations that involve live patients, including those pertaining to anesthesia or anesthetic agents and duties of auxiliary personnel except those sponsored by recognized dental schools, dental hygiene schools, medical schools or colleges.

The provisions of this §108.63 adopted to be effective May 1, 2013, 37 TexReg 9637.

SUBCHAPTER F. CONTRACTUAL AGREEMENTS

§108.70. Improper Influence on Professional Judgment.

(a) For the purposes of this rule, the term dentist shall include the following:

(1) a dentist licensed by the State Board of Dental Examiners;

(2) a professional corporation wholly owned by one or more dentists;

(3) other entities that provide dental services and are owned by one or more dentists.

(b) Any dentist entering into any contract, partnership or other agreement or arrangement which allows any person other than a dentist any one or more of the following rights, powers or authorities shall be presumed to have violated the provisions of the Dental Practice Act, Section 251.003 regarding controlling, attempting to control, influencing, attempting to influence or otherwise interfering with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition:

(1) Controlling, owning or setting any conditions for access to or the specific contents of dental records of patients of a dentist.

(2) Setting a maximum or other standardized time for the performance of specific dental procedures.

(3) Placing any limitations or requirements on treatments, referrals, or consultations except those based on the professional judgment of the dentist.

(4) Limiting or imposing requirements concerning the type or scope of dental treatment, procedures or services which may be recommended, prescribed, directed or performed, except that a dentist may limit the dentist's practice or the practice of a dentist employed by or contracting with the dentist to certain procedures or the treatment of certain dental diseases.

(5) Limiting or imposing requirements concerning the supplies, instruments or equipment deemed reasonably necessary by a dentist to provide diagnoses and treatment of the patients of the dentist.

(6) Limiting or imposing requirements for the professional training deemed necessary by the dentist to properly serve the patients of the dentist.

(7) Directing or influencing the selection of specific diagnostic examinations and treatment or practices regarding patients without due regard to the recommended diagnostic examinations and treatment agreed upon by the dentist and the patient, except that a dentist having the responsibility for training or supervising another dentist may reasonably limit treatment or practices as a part of the training or supervision of a dentist based upon the training and competency of a dentist to perform certain treatment or practices

(8) Limiting or determining the duties of professional, clinical or other personnel employed to assist a dentist in the practice of dentistry.

(9) Establishing professional standards, protocols or practice guidelines which in the professional judgment of the dentist providing dental service to the dentist's patient, conflict with generally accepted standards within the dental profession.

(10) Entering into any agreement or arrangement for management services that:

(A) interferes with a dentist's exercise of his/her independent professional judgment;

(B) encourages improper overtreatment or undertreatment by dentists; or

(C) encourages impermissible referrals from unlicensed persons in consideration of a fee.

(11) Placing limitations or conditions upon communications that are clinical in nature with the dentist's patients.

(12) Precluding or restricting a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(13) Scheduling patients of the dentist in a manner that may have the effect of discouraging new patients from coming into the dentist's practice, or postponing future appointments or that give scheduling preference to an individual, class or group.

(14) Penalizing a dentist for reporting violations of a law regulating the practice of dentistry.

(15) Conditioning the payment of fees to a dentist or the amount of management fees a dentist must pay, on the referral of patients to other health care providers specified by a non-dentist.

(c) The entry into one or more of the following agreements by a dentist shall not be presumed to have violated the Texas Dental Practice Act, Section 251.003.

(1) Leases, mortgages, ownership agreements or other arrangements regarding use of space for dental offices, based on a set, non percentage fee reasonably related to the fair market value of the office space provided at the time the lease or other arrangement is entered into.

(2) Agreements regarding the purchase, sale, financing or lease of dental equipment, instruments and supplies so long as the dentist maintains the complete care, custody, and control of the dental instruments and supplies and the lease does not provide for a payment or fee based upon a percentage of the revenue received by the dentist, or the dental practice.

(3) Agreements providing for accounting, bookkeeping, investment or similar financial services.

(4) The financing, lease, use or ownership of non-dentist business equipment such as telephones, computers, software, and general office equipment at reasonable, market related fees.

(5) Services regarding the pledge, collection or sale of accounts receivable from patients.

(6) Agreements regarding billing and collection services.

(7) Advertising and marketing services so long as the dentist remains solely responsible for the content of any advertising or marketing services and for ensuring that such conform to all applicable legal requirements.

(8) Agreements regarding consulting, professional development, business practices and other advisory agreements which do not limit the dentist's ability to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition.

(9) Employment agreements which specify that the dentist shall continue to have the right to use the dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition, provided that in practice the dentist is allowed to use the dentist's professional judgment.

(d) The provisions of subsection (c) of this section herein may be rebutted and the entry into these agreements or other undertakings may be found to be in violation of the Dental Practice Act if it can be shown that the agreements or other undertakings result in the control, attempt to control, influence, attempt to influence or otherwise interfere with the exercise of a

dentist's independent professional judgment regarding the diagnosis or treatment of any dental disease, disorder or physical condition.

(e) This rule shall not be applicable to dentists or others covered by the Dental Practice Act, Section 251.004, entitled Exceptions, Section 260.001, regarding administration of an estate and continuation of practice nor Sections 260.002 through 260.004, regarding employment of dentists.

The provisions of this §108.70 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.71. Providing Copies of Certain Contracts. Upon written request by the State board of Dental Examiners (Board), a dentist or dental organization that contracts with any entity that provides management services or pays all or part of any patient charges must, within fourteen (14) days of receipt of the request, provide copies as requested to the Board of any of the following:

(1) all documents that constitute the contract, and all documents referenced by the contract, including all amendments and addenda;

(2) billing statements sent to patients and third party payers;

(3) information sent to patients concerning services rendered and concerning the right, if any, for the contracting entity to bill and collect fees for dental services; and

(4) copies of documentation, if any, offered by or required of the contracting entity to potential investors in the entity.

The provisions of this §108.71 adopted to be effective February 20, 2001, 26 TexReg 1494.

§108.72. Dental Custodian of Records.

(a) An owner, shareholder, partner, or executive officer of a clinic or other entity that provides dental services for the public shall designate a licensed Texas dentist as the dental custodian of records. The dental custodian of records shall provide records to the Board, a dentist who has provided dental treatment, and patients in accordance with Texas Occupations Code §§258.0511, 258.109, 261.055, 263.008 and §108.8 of this chapter (relating to Records of the Dentist), and other law regulating dental patient records.

(b) A dental custodian of records shall furnish copies of dental records on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act.

(c) A dental custodian of records shall make dental records available for inspection and reproduction to a dentist who has provided dental treatment.

(1) A dentist who has provided dental treatment shall request access to dental records in writing.

(2) A dental custodian of records shall make dental records available for inspection and reproduction within 15 days of the written request.

(3) The right of access shall be maintained regardless of employment status.

(4) The requirement to provide access to records shall not be modified or waived by agreement.

(d) A dental custodian of records shall furnish copies of dental records to a patient who requests his or her dental records pursuant to §108.8(g) of this chapter.

The provisions of this §108.72 adopted to be effective December 24, 2007, 32 TexReg 9628.

§108.73. Dental Service Organizations. Upon written request by the Board, a dental service organization, as defined by §254.019(c) of the Dental Practice Act, shall provide to the Board the address of the locations where the organization provides dental services in this state and the name of each dentist providing dental services at each location.

The provisions of this §108.73 adopted to be effective August 25, 2013, 38 TexReg 5262.

CHAPTER 110. SEDATION AND ANESTHESIA

§110.1. Definitions. Unless the context clearly indicates otherwise, the following words and terms shall have the following meaning when used in this chapter.

(1) Analgesia--the diminution or elimination of pain.

(2) Behavioral management--the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.

(3) Board/Agency--the Texas State Board of Dental Examiners, also known as the State Board of Dental Examiners, and, for brevity, the Dental Board, the Agency, or the Board.

(4) Child/children--a patient twelve (12) years of age or younger.

(5) Competent--displaying special skill or knowledge derived from training and experience.

(6) Deep sedation--a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(7) Direct supervision--the dentist responsible for the sedation/anesthesia procedure shall be physically present in the facility and shall be continuously aware of the patient's physical status and well-being.

(8) Enteral--any technique of administration of sedation in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual).

(9) Facility--the location where a permit holder practices dentistry and provides anesthesia/sedation services.

(10) Facility inspection--an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care.

(11) General anesthesia--a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(12) Immediately available--on-site in the facility and available for immediate use.

(13) Incremental dosing--administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD).

(14) Local anesthesia--the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

(15) Maximum recommended dose (applies to minimal sedation)--FDA maximum recommended dose (MRD) of a drug, as printed in FDA-approved labeling for unmonitored home use.

(16) Minimal sedation--a minimally depressed level of consciousness, produced by a pharmacological method, which retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. Medication administered for the purpose of minimal sedation shall not exceed the maximum doses recommended by the drug manufacturer. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation. During longer periods of minimal sedation in which the total amount of time of the procedures exceeds the effective duration of the sedative effect of the drug used, the supplemental dose of the sedative shall not exceed total safe dosage levels based on the effective half-life of the drug used. The total aggregate dose must not exceed one and one-half times the MRD on the day of treatment. The use of prescribed, previsit sedatives for children aged twelve (12) or younger should be avoided due to the risk of unobserved respiratory obstruction during the transport by untrained individuals.

(17) Moderate sedation--drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. A Level 2 permit is required for moderate sedation limited to enteral routes of administration. A Level 3 permit is required for moderate sedation including parenteral routes of administration. In accordance with this particular definition, the drugs or techniques used shall carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of an agent before the effects of previous dosing can be fully appreciated may result in a greater alteration of the state of consciousness than is the intent of the dentist. A patient whose only response is reflex withdrawal from a

painful stimulus is not considered to be in a state of moderate sedation.

(18) Parenteral--the administration of pharmacological agents intravenously, intraosseously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally.

(19) Patient Physical Status Classification:

(A) ASA--American Society of Anesthesiologists

(B) ASA I--a normal health patient

(C) ASA II--a patient with mild systemic disease

(D) ASA III--a patient with severe systemic disease

(E) ASA IV--a patient with severe systemic disease that is a constant threat to life

(F) ASA V--a moribund patient who is not expected to survive without the operation

(G) ASA VI--a declared brain-dead patient whose organs are being removed for donor purposes

(H) E--emergency operation of any variety (used to modify ASA I - ASA VI).

(20) Portability--the ability of a permit holder to provide permitted anesthesia services in a location other than a facility or satellite facility.

(21) Protective reflexes--includes the ability to swallow and cough effectively.

(22) Satellite facility--an additional office or offices owned or operated by the permit holder, or owned or operated by a professional organization through which the permit holder practices dentistry, or a licensed hospital facility.

(23) Supplemental dosing (applies to minimal sedation)--during minimal sedation, supplemental dosing is a single additional dose of the initial dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half-life of the initial dosing has passed. The aggregate dose must not exceed one and one-half times the MRD on the day of treatment.

(24) Time-oriented anesthesia record--documentation at appropriate time intervals of drugs, doses, and physiologic data obtained during patient monitoring. Physiologic data for moderate sedation, deep sedation and general anesthesia must be taken and recorded at required intervals unless patient cooperation interferes or prohibits compliance.

(25) Titration (applies to moderate sedation)--administration of incremental doses of a drug until the desired effect is reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over-sedation. When the intent is moderate sedation, one must know whether the

previous dose has taken full effect before administering an additional drug increment.

The provisions of this §110.1 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.2. Sedation/Anesthesia Permit.

(a) A dentist licensed under Chapter 101 of this title shall obtain an anesthesia permit for the following anesthesia procedures used for the purpose of performing dentistry:

(1) Nitrous Oxide/Oxygen inhalation sedation;

(2) Level 1: Minimal sedation;

(3) Level 2: Moderate sedation limited to enteral routes of administration;

(4) Level 3: Moderate sedation which includes parenteral routes of administration; or

(5) Level 4: Deep sedation or general anesthesia.

(b) A dentist licensed to practice in Texas who desires to administer nitrous oxide/oxygen inhalation sedation or Level 1, Level 2, Level 3 or Level 4 sedation must obtain a permit from the State Board of Dental Examiners (Board). A permit is not required to administer Schedule II drugs prescribed for the purpose of pain control or post-operative care.

(1) A permit may be obtained by completing an application form approved by the Board.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of a sedation/anesthesia permit, the Board may require that the applicant undergo a facility inspection or further review of credentials. The Board may direct an Anesthesia Consultant, who has been appointed by the Board, to assist in this inspection or review. The applicant will be notified in writing if an inspection is required and provided with the name of an Anesthesia Consultant who will coordinate the inspection. The applicant must make arrangements for completion of the inspection within 180 days of the date the notice is mailed. An extension of no more than ninety (90) days may be granted if the designated Anesthesia Consultant requests one.

(4) An applicant for a sedation/anesthesia permit must be licensed by and should be in good standing with the Board. For purposes of this chapter "good standing" means that the dentist's license is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing may not be approved.

The provisions of this §110.2 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.3. Nitrous Oxide/Oxygen Inhalation Sedation.

(a) Education and Professional Requirements. A dentist applying for a nitrous oxide/oxygen inhalation

sedation permit shall meet one of the following educational/professional criteria:

(1) satisfactory completion of a comprehensive training program consistent with that described for nitrous oxide/oxygen inhalation sedation administration in the American Dental Association (ADA) Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students. This includes a minimum of fourteen (14) hours of training, including a clinical component, during which competency in inhalation sedation technique is achieved. Acceptable courses include those obtained from academic programs of instruction recognized by the ADA Commission on Dental Accreditation (CODA); or courses approved and recognized by the ADA Continuing Education Recognition Program (CERP); or courses approved and recognized by the Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE);

(2) satisfactory completion of an ADA/CODA approved or recognized pre-doctoral dental or postdoctoral dental training program which affords comprehensive training necessary to administer and manage nitrous oxide/oxygen inhalation sedation; or

(3) is a Texas licensed dentist, has a current Board-issued nitrous oxide/oxygen inhalation sedation permit, and has been using nitrous oxide/oxygen inhalation sedation in a competent manner immediately prior to the implementation of this chapter on June 1, 2011. Any dentist whose Board-issued nitrous oxide/oxygen inhalation sedation permit is active on June 1, 2011 shall automatically continue to hold this permit.

(b) Standard of Care Requirements. A dentist performing nitrous oxide/oxygen inhalation sedation shall maintain the minimum standard of care for anesthesia, and in addition shall:

(1) adhere to the clinical requirements as detailed in this section;

(2) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of nitrous oxide/oxygen inhalation sedation;

(3) maintain current certification in Basic Life Support (BLS) for Healthcare Providers for the assistant staff by having them pass a course that includes a written examination and a hands-on demonstration of skills; and

(4) not supervise a Certified Registered Nurse Anesthetist (CRNA) performing a nitrous oxide/oxygen inhalation sedation procedure unless the dentist holds a permit issued by the Board for the sedation procedure being performed. This provision and similar provisions in subsequent sections address dentists and are not

intended to address the scope of practice of persons licensed by any other agency.

(c) Clinical Requirements. A dentist must meet the following clinical requirements to utilize nitrous oxide/oxygen inhalation sedation:

(1) Patient Evaluation. Patients considered for nitrous oxide/oxygen inhalation sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may consist of a review of their current medical history and medication use. However, patients with significant medical considerations (ASA III, IV) may require consultation with the patient's primary care physician or consulting medical specialist.

(2) Pre-Procedure Preparation and Informed Consent.

(A) The patient, parent, guardian, or caregiver must be advised of the risks associated with the delivery of nitrous oxide/oxygen inhalation sedation and must provide written, informed consent for the proposed sedation.

(B) The dentist shall determine that an adequate oxygen supply is available and evaluate equipment for proper operation and delivery of inhalation agents prior to use on each patient.

(C) Baseline vitals must be obtained in accordance with §108.7 and §108.8 of this title.

(3) Personnel and Equipment Requirements.

(A) In addition to the dentist, at least one member of the assistant staff should be present during the administration of nitrous oxide/oxygen inhalation sedation in nonemergency situations.

(B) The inhalation equipment must have a fail-safe system that is appropriately checked and calibrated. The equipment must also have either:

(i) a functioning device that prohibits the delivery of less than 30% oxygen; or

(ii) an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

(C) If nitrous oxide and oxygen delivery equipment capable of delivering less than 30% oxygen is used, an in-line oxygen analyzer must be utilized.

(D) The equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(E) The ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(4) Monitoring.

(A) The dentist must induce the nitrous oxide/oxygen inhalation sedation and must remain in the room with the patient during the maintenance of the sedation until pharmacologic and physiologic vital sign stability is established.

(B) After pharmacologic and physiologic vital sign stability has been established, the dentist may delegate the monitoring of the nitrous oxide/oxygen

inhalation sedation to a dental auxiliary who has been certified to monitor the administration of nitrous oxide/oxygen inhalation sedation by the State Board of Dental Examiners.

(5) Documentation.

(A) Pre-operative baseline vitals must be documented.

(B) Individuals present during administration must be documented.

(C) Maximum concentration administered must be documented.

(D) The start and finish times of the inhalation agent must be documented.

(6) Recovery and Discharge.

(A) Recovery from nitrous oxide/oxygen inhalation sedation, when used alone, should be relatively quick, requiring only that the patient remain in an operator chair as needed.

(B) Patients who have unusual reactions to nitrous oxide/oxygen inhalation sedation should be assisted and monitored either in an operator chair or recovery room until stable for discharge.

(C) The dentist must determine that the patient is appropriately responsive prior to discharge. The dentist shall not leave the facility until the patient meets the criteria for discharge and is discharged from the facility.

(7) Emergency Management. Because sedation is a continuum, it is not always possible to predict how an individual patient will respond. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist must stop the dental procedure until the patient returns to the intended level of sedation. The dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of the nitrous oxide, and providing the equipment and protocols for patient rescue. A dentist must be able to rescue patients who enter a deeper state of sedation than intended. The dentist, personnel and facility must be prepared to treat emergencies that may arise from the administration of nitrous oxide/oxygen inhalation sedation.

(8) Management of Children. For children twelve (12) years of age and under, the dentist should observe the American Academy of Pediatrics/American Academy of Pediatric Dentists Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(d) A dentist who holds a nitrous oxide/oxygen inhalation sedation permit shall not intentionally administer minimal sedation, moderate sedation, deep sedation, or general anesthesia.

The provisions of this §110.3 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.4. Minimal Sedation.

(a) Education and Professional Requirements. A dentist applying for a Level 1 Minimal Sedation permit shall meet one of the following educational/professional criteria:

(1) satisfactory completion of training to the level of competency in minimal sedation consistent with that prescribed in the American Dental Association (ADA) Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, or a comprehensive training program in minimal sedation that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students. This includes a minimum of sixteen (16) hours of didactic training and instruction in which competency in enteral and/or combined inhalation-enteral minimal sedation technique is demonstrated; or

(2) satisfactory completion of an advanced education program accredited by the ADA Commission on Dental Accreditation (CODA) that affords comprehensive training necessary to administer and manage minimal sedation, commensurate with the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; or

(3) is a Texas licensed dentist, has a current Board-issued enteral permit, and has been using minimal sedation in a competent manner immediately prior to the implementation of this chapter on June 1, 2011. Any Texas licensed dentist who was issued an enteral sedation permit before June 1, 2011 and whose enteral sedation permit was active on June 1, 2011 shall automatically have the permit reclassified as a Level 1 Minimal Sedation permit on June 1, 2011. A Texas licensed dentist whose permit is reclassified from an enteral sedation permit to a Level 1 Minimal Sedation permit on June 1, 2011 may continue to administer enteral sedation until January 1, 2013. On or before January 1, 2013, the dentist shall either provide proof that adequate education has been obtained by submitting an application for a Level 2 permit on or before that date, or shall comply with the requirements of a Level 1 permit after that date. A dentist shall always follow the standard of care and clinical requirements for the level of sedation he or she is performing.

(b) Standard of Care Requirements. A dentist performing minimal sedation shall maintain the minimum standard of care for anesthesia, and in addition shall:

(1) adhere to the clinical requirements as detailed in this section;

(2) maintain under continuous direct supervision auxiliary personnel who shall be capable of

reasonably assisting in procedures, problems, and emergencies incident to the use of minimal sedation;

(3) maintain current certification in Basic Life Support (BLS) for Healthcare Providers for the assistant staff by having them pass a course that includes a written examination and a hands-on demonstration of skills; and

(4) not supervise a Certified Registered Nurse Anesthetist (CRNA) performing a minimal sedation procedure unless the dentist holds a permit issued by the Board for the sedation procedure being performed.

(c) Clinical Requirements. A dentist must meet the following clinical requirements for utilization of minimal sedation:

(1) Patient Evaluation. Patients considered for minimal sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may consist of a review of their current medical history and medication use. However, patients with significant medical considerations (ASA III, IV) may require consultation with their primary care physician or consulting medical specialist.

(2) Pre-Procedure Preparation and Informed Consent.

(A) The patient, parent, guardian, or caregiver must be advised regarding the procedure associated with the delivery of any sedative agents and must provide written, informed consent for the proposed sedation.

(B) The dentist shall determine that an adequate oxygen supply is available and evaluate equipment for proper operation and delivery of adequate oxygen under positive pressure.

(C) Baseline vital signs must be obtained in accordance with §108.7 and §108.8 of this title.

(D) A focused physical evaluation must be performed as deemed appropriate.

(E) Pre-procedure dietary restrictions must be considered based on the sedative technique prescribed.

(F) Pre-procedure verbal and written instructions must be given to the patient, parent, escort, guardian, or care-giver.

(3) Personnel and Equipment Requirements.

(A) In addition to the dentist, at least one additional person trained in Basic Life Support (BLS) for Healthcare Providers must be present.

(B) A positive-pressure oxygen delivery system suitable for the patient being treated must be immediately available.

(C) When inhalation equipment is used, it must have a fail-safe system that is appropriately checked and calibrated. The equipment must also have either:

(i) a functioning device that prohibits the delivery of less than 30% oxygen; or

(ii) an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

(D) An appropriate scavenging system must be available if gases other than oxygen or air are used.

(4) Monitoring. The dentist administering the sedation must remain in the operator room to monitor the patient until the patient meets the criteria for discharge to the recovery area. Once the patient meets the criteria for discharge to the recovery area, the dentist may delegate monitoring to a qualified dental auxiliary. Monitoring during the administration of sedation must include:

(A) Oxygenation.

(i) Color of mucosa, skin, or blood must be evaluated continually.

(ii) Oxygen saturation monitoring by pulse-oximetry should be used when a single drug minimal sedative is used. The additional use of nitrous oxide has a greater potential to increase the patient's level of sedation to moderate sedation, and a pulse oximeter must be used.

(B) Ventilation. The dentist (or appropriately qualified individual) must observe chest excursions and must verify respirations continually.

(C) Circulation. Blood pressure and heart rate should be evaluated preprocedurally, post-procedurally and intra-procedurally as necessary.

(5) Documentation.

(A) Documentation must be made in accordance with §108.7 and §108.8 of this title and must include the names and dosages of all drugs administered and the names of individuals present during administration of the drugs.

(B) A time-oriented sedation record may be considered for documentation of all monitoring parameters.

(C) Pulse oximetry, heart rate, respiratory rate, and blood pressure are the parameters which may be documented at appropriate intervals of no more than 10 minutes.

(6) Recovery and Discharge.

(A) Oxygen and suction equipment must be immediately available in the recovery area if a separate recovery area is utilized.

(B) The qualified dentist must monitor the patient during recovery until the patient is ready for discharge by the dentist. The dentist may delegate this task to an appropriately qualified dental auxiliary.

(C) The dentist must determine and document that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory prior to discharge. The dentist shall not

leave the facility until the patient meets the criteria for discharge and is discharged from the facility.

(D) Post-procedure verbal and written instructions must be given to the patient, parent, escort, guardian, or care-giver. Post-procedure, patients should be accompanied by an adult caregiver for an appropriate period of recovery.

(7) Emergency Management. Because sedation is a continuum, it is not always possible to predict how an individual patient will respond. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist must stop the dental procedure until the patient returns to the intended level of sedation. The dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of minimal sedation, and providing the equipment and protocols for patient rescue. A dentist must be able to rescue patients who enter a deeper state of sedation than intended.

(8) Management of Children. For children twelve (12) years of age and under, the dentist should observe the American Academy of Pediatrics/American Academy of Pediatric Dentists Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(d) A dentist who holds a minimal sedation permit shall not intentionally administer moderate sedation, deep sedation, or general anesthesia.

The provisions of this §110.4 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.5. Moderate Sedation.

(a) Education and Professional Requirements.

(1) A dentist applying for a Level 2 Moderate Sedation permit (limited to enteral route of administration) must satisfy at least one of the following educational/professional criteria:

(A) satisfactory completion of a comprehensive training program consistent with that described for moderate enteral sedation in the American Dental Association (ADA) Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students. This includes a minimum of twenty-four (24) hours of instruction, plus management of at least ten (10) case experiences in enteral moderate sedation. These ten (10) case experiences must include at least three live clinical dental experiences managed by participants in groups of no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning (rescuing) a patient from deep to moderate sedation; or

(B) satisfactory completion of an advanced education program accredited by the ADA

Commission on Dental Accreditation (CODA) that affords comprehensive and appropriate training necessary to administer and manage enteral moderate sedation, commensurate with the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; or

(C) is a Texas licensed dentist who was issued an enteral sedation permit before June 1, 2011 and whose enteral sedation permit was active on June 1, 2011. Dentists in this category shall automatically have their permit reclassified as a Level 1 Minimal Sedation permit on June 1, 2011. A Texas licensed dentist whose permit is reclassified from an enteral sedation permit to a Level 1 Minimal Sedation permit on June 1, 2011 may continue to administer enteral sedation until January 1, 2013. On or before January 1, 2013, the dentist shall either provide proof that adequate education has been obtained by submitting an application for a Level 2 permit on or before that date, or shall comply with the requirements of a Level 1 permit after that date. A dentist shall always follow the standard of care and clinical requirements for the level of sedation he or she is performing.

(2) A dentist applying for a Level 3 Moderate Sedation permit (inclusive of parenteral routes of administration) must satisfy at least one of the following educational/professional criteria:

(A) satisfactory completion of a comprehensive training program consistent with that described for parenteral moderate sedation in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students. This includes a minimum of sixty (60) hours of didactic training and instruction and satisfactory management of a minimum of twenty (20) dental patients, under supervision, using intravenous sedation; or

(B) satisfactory completion of an advanced education program accredited by the ADA/CODA that affords comprehensive and appropriate training necessary to administer and manage parenteral moderate sedation, commensurate with the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; or

(C) satisfactory completion of an internship or residency which included intravenous moderate sedation training equivalent to that defined in this subsection; or

(D) is a Texas licensed dentist who had a current parenteral sedation permit issued by the Board and has been using parenteral sedation in a competent manner immediately prior to the implementation of this chapter on June 1, 2011. A Texas licensed dentist whose Board-issued permit to perform parenteral sedation is active on June 1, 2011 shall automatically have the permit reclassified as a Level 3 Moderate

Sedation (inclusive of parenteral routes of administration) permit.

(3) A dentist applying for a Level 2 or 3 Moderate Sedation permit must satisfy the following emergency management certification criteria:

(A) Licensees holding moderate sedation permits shall document:

(i) Current (as indicated by the provider), successful completion of Basic Life Support (BLS) for Healthcare Providers; AND

(ii) Current (as indicated by the provider), successful completion of an Advanced Cardiac Life Support (ACLS) course, OR current (as indicated by the provider), successful completion of a Pediatric Advanced Life Support (PALS) course, OR successful completion of a Board approved two-day anesthesia emergency course.

(B) Licensees holding Level 2 or Level 3 Moderate Sedation permits who provide anesthesia services to children (age twelve (12) or younger) must document current, successful completion of a PALS course.

(b) Standard of Care Requirements. A dentist must maintain the minimum standard of care as outlined in §108.7 of this title and in addition shall:

(1) adhere to the clinical requirements as detailed in this section;

(2) maintain under continuous personal supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of moderate sedation;

(3) maintain current certification in Basic Life Support (BLS) for Healthcare Providers for the assistant staff by having them pass a course that includes a written examination and a hands-on demonstration of skills; and

(4) not supervise a Certified Registered Nurse Anesthetist (CRNA) performing a moderate sedation procedure unless the dentist holds a permit issued by the Board for the sedation procedure being performed.

(c) Clinical Requirements.

(1) Patient Evaluation. Patients considered for moderate sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this should consist of at least a review of the patient's current medical history and medication use. However, patients with significant medical considerations (ASA III, IV) may require consultation with their primary care physician or consulting medical specialist.

(2) Pre-Procedure Preparation and Informed Consent.

(A) The patient, parent, guardian, or care-giver must be advised regarding the procedure associated with the delivery of any sedative agents and must provide written, informed consent for the

proposed sedation. The informed consent must be specific to the procedure being performed and must specify that the risks related to the procedure include cardiac arrest, brain injury, and death.

(B) The dentist shall determine that an adequate oxygen supply is available and evaluate equipment for proper operation and delivery of adequate oxygen under positive pressure.

(C) Baseline vital signs must be obtained in accordance with §108.7 and §108.8 of this title.

(D) A focused physical evaluation must be performed as deemed appropriate.

(E) Pre-procedure dietary restrictions must be considered based on the sedative technique prescribed.

(F) Pre-procedure verbal or written instructions must be given to the patient, parent, escort, guardian, or care-giver.

(3) Personnel and Equipment Requirements.

(A) In addition to the dentist, at least one additional person trained in Basic Life Support (BLS) for Healthcare Providers must be present.

(B) A positive-pressure oxygen delivery system suitable for the patient being treated must be immediately available.

(C) When inhalation equipment is used, it must have a fail-safe system that is appropriately checked and calibrated. The equipment must also have either:

(i) a functioning device that prohibits the delivery of less than 30% oxygen; or

(ii) an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

(D) An appropriate scavenging system must be available if gases other than oxygen or air are used.

(E) The equipment necessary to establish intravenous access must be available.

(4) Monitoring. The dentist administering moderate sedation must remain in the operatory room to monitor the patient continuously until the patient meets the criteria for recovery. When active treatment concludes and the patient recovers to a minimally sedated level, the dentist may delegate a qualified dental auxiliary to remain with the patient and continue to monitor the patient until he/she is discharged from the facility. The dentist must not leave the facility until the patient meets the criteria for discharge and is discharged from the facility. Monitoring must include:

(A) Consciousness. Level of consciousness (e.g., responsiveness to verbal command) must be continually assessed.

(B) Oxygenation.

(i) Color of mucosa, skin, or blood must be evaluated continually.

(ii) Oxygen saturation must be evaluated by pulse-oximetry continuously.

(C) Ventilation.

(i) Chest excursions must be continually observed.

(ii) Ventilation must be continually evaluated. This can be accomplished by auscultation of breath sounds, monitoring end-tidal CO₂ or by verbal communication with the patient.

(D) Circulation.

(i) Blood pressure and heart rate must be continually evaluated.

(ii) Continuous EKG monitoring of patients sedated under moderate parenteral sedation is required.

(5) Documentation.

(A) Documentation must be made in accordance with §108.7 and §108.8 of this title.

(B) A written time-oriented anesthetic record must be maintained and must include the names and dosages of all drugs administered and the names of individuals present during administration of the drugs.

(C) Pulse-oximetry, heart rate, respiratory rate, and blood pressure must be continually monitored and documented at appropriate intervals of no more than ten (10) minutes.

(6) Recovery and Discharge.

(A) Oxygen and suction equipment must be immediately available if a separate recovery area is utilized.

(B) While the patient is in the recovery area, the dentist or qualified clinical staff must continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness.

(C) The dentist must determine and document that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory for discharge. The dentist shall not leave the facility until the patient meets the criteria for discharge and is discharged from the facility.

(D) Post-procedure verbal and written instructions must be given to the patient, parent, escort, guardian, or care-giver. Post-procedure, patients should be accompanied by an adult caregiver for an appropriate period of recovery.

(E) If a reversal agent is administered before discharge criteria have been met, the patient must be monitored until recovery is assured.

(7) Emergency Management.

(A) The dentist is responsible for the sedation management, adequacy of the facility and staff, diagnosis and treatment of emergencies associated with the administration of moderate sedation, and providing the equipment and protocols for patient rescue. This includes immediate access to pharmacologic antagonists and equipment for

establishing a patent airway and providing positive pressure ventilation with oxygen.

(B) Advanced airway equipment and resuscitation medications must be available.

(C) A defibrillator should be available when ASA I and II patients are sedated under moderate sedation. A defibrillator must be available when ASA III and IV patients are sedated under moderate sedation.

(D) Because sedation is a continuum, it is not always possible to predict how an individual patient will respond. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist must stop the dental procedure until the patient returns to the intended level of sedation. The dentist administering moderate sedation must be able to recover patients who enter a deeper state of sedation than intended.

(8) Management of Children. For children twelve (12) years of age and under, the dentist should observe the American Academy of Pediatrics/American Academy of Pediatric Dentists Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(d) A dentist who holds a moderate sedation permit shall not intentionally administer deep sedation or general anesthesia.

The provisions of this §110.5 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.6. Deep Sedation or General Anesthesia.

(a) Education and Professional Requirements.

(1) A dentist applying for a permit to administer deep sedation or general anesthesia must satisfy one of the following criteria:

(A) satisfactory completion of an advanced education program accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA) that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia; or

(B) is a Texas licensed dentist who holds a current permit to administer deep sedation or general anesthesia issued by the Board and who has been using deep sedation or general anesthesia in a competent manner immediately prior to the implementation of this chapter on June 1, 2011. A Texas licensed dentist whose Board-issued permit to perform deep sedation or general anesthesia is active on June 1, 2011 shall automatically have the permit reclassified as a Level 4 Deep Sedation or General Anesthesia permit.

(2) A dentist applying for a permit to administer deep sedation or general anesthesia must satisfy the following emergency management certification criteria:

(A) Licensees holding deep sedation or general anesthesia permits shall document:

(i) Current (as indicated by the provider), successful completion of Basic Life Support (BLS) for Healthcare Providers; AND

(ii) Current (as indicated by the provider), successful completion of an Advanced Cardiac Life Support (ACLS) course, OR current (as indicated by the provider), successful completion of a Pediatric Advanced Life Support (PALS) course, OR successful completion of a Board approved two-day anesthesia emergency course.

(B) Licensees holding deep sedation or general anesthesia permits who provide anesthesia services to children (age twelve (12) or younger) must document current, successful completion of a PALS course.

(b) Standard of Care Requirements. A dentist must maintain the minimum standard of care for the administration of anesthesia as outlined in §108.7 of this title and in addition shall:

(1) adhere to the clinical requirements as detailed in this section;

(2) maintain under continuous direct supervision a minimum of two qualified dental auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of deep sedation and/or general anesthesia;

(3) maintain current certification in Basic Life Support (BLS) for Healthcare Providers for the assistant staff by having them pass a course that includes a written examination and a hands-on demonstration of skills; and

(4) not supervise a Certified Registered Nurse Anesthetist (CRNA) performing a deep sedation/general anesthesia procedure unless the dentist holds a permit issued by the Board for the sedation procedure being performed.

(c) Clinical Requirements.

(1) Patient Evaluation. Patients considered for deep sedation or general anesthesia must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this must consist of at least a review of their current medical history, medication use, and NPO status. However, patients with significant medical considerations (ASA III, IV) may require consultation with their primary care physician or consulting medical specialist.

(2) Pre-Procedure Preparation and Informed Consent.

(A) The patient, parent, guardian, or care-giver must be advised regarding the procedure associated with the delivery of any sedative or anesthetic agents and must provide written, informed consent for the proposed deep sedation or general

anesthesia procedure. The informed consent must be specific to the deep sedation and/or general anesthesia procedure being performed and must specify that the risks related to the procedure include cardiac arrest, brain injury, and death.

(B) The dentist shall determine that an adequate oxygen supply is available and evaluate equipment for proper operation and delivery of adequate oxygen under positive pressure.

(C) Baseline vital signs must be obtained in accordance with §108.7 and §108.8 of this title.

(D) A focused physical evaluation must be performed as deemed appropriate.

(E) Pre-procedure dietary restrictions must be considered based on the sedative/anesthetic technique prescribed.

(F) Pre-procedure verbal and written instructions must be given to the patient, parent, escort, guardian, or care-giver.

(G) An intravenous line, which is secured throughout the procedure, must be established except as provided in paragraph (7) of this subsection, regarding Pediatric and Special Needs Patients.

(3) Personnel and Equipment Requirements.

(A) Personnel.

(i) A minimum of three (3) individuals must be present during the procedure:

(I) a dentist qualified to administer the deep sedation or general anesthesia who is currently certified in ACLS and/or PALS; and

(II) two additional individuals who have current certification of successfully completing a course in Basic Life Support (BLS) for Healthcare Providers.

(ii) When the same individual responsible for administering the deep sedation or general anesthesia is performing the dental procedure, the dentist must delegate patient monitoring to a qualified individual.

(B) Equipment.

(i) A positive-pressure oxygen delivery system suitable for the patient being treated must be immediately available.

(ii) When inhalation equipment is used, it must have a fail-safe system that is appropriately checked and calibrated. The equipment must also have either:

(I) a functioning device that prohibits the delivery of less than 30% oxygen; or

(II) an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm.

(iii) An appropriate scavenging system must be available if gases other than oxygen are used.

(iv) The equipment necessary to establish intravenous access must be available.

(v) Equipment and drugs necessary to provide advanced airway management and advanced cardiac life support must be immediately available.

(vi) If volatile anesthetic agents are utilized, an inspired agent analysis monitor and capnograph should be considered.

(vii) Emergency medications and a defibrillator must be immediately available.

(4) Monitoring. A qualified dentist administering deep sedation or general anesthesia must remain in the operatory room to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area. The dentist must not leave the facility until the patient meets the criteria for discharge and is discharged from the facility. Monitoring must include:

(A) Oxygenation.

(i) Color of mucosa, skin, or blood must be continually evaluated.

(ii) Oxygenation saturation must be evaluated continuously by pulse oximetry.

(B) Ventilation.

(i) Intubated patient: End-tidal CO₂ must be continuously monitored and evaluated.

(ii) Non-intubated patient: Breath sounds via auscultation and/or end-tidal CO₂ must be continually monitored and evaluated.

(iii) Respiration rate must be continually monitored and evaluated.

(C) Circulation.

(i) Heart rate and rhythm via EKG and pulse rate via pulse oximetry must be evaluated throughout the procedure.

(ii) Blood pressure must be continually monitored.

(D) Temperature.

(i) A device capable of measuring body temperature must be readily available during the administration of deep sedation or general anesthesia.

(ii) The equipment to continuously monitor body temperature should be available and must be performed whenever triggering agents associated with malignant hyperthermia are administered.

(5) Documentation.

(A) Documentation must be made in accordance with §108.7 and §108.8 of this title and must include the names, times and dosages of all drugs administered and the names of individuals present during administration of the drugs.

(B) A written time-oriented anesthetic record must be maintained.

(C) Pulse oximetry and end-tidal CO₂ measurements (if taken with an intubated patient), heart

rate, respiratory rate, and blood pressure must be continually recorded at five (5) minute intervals.

(6) Recovery and Discharge.

(A) Oxygen and suction equipment must be immediately available if a separate recovery area is utilized.

(B) The dentist or clinical staff must continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness.

(C) The dentist must determine and document that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory prior to discharge. The dentist shall not leave the facility until the patient meets the criteria for discharge and is discharged from the facility.

(D) Post-procedure verbal and written instructions must be given to the patient, parent, escort, guardian, or care-giver. Post-procedure, patients should be accompanied by an adult caregiver for an appropriate period of recovery.

(7) Special Situations.

(A) Special Needs Patients. Because many dental patients undergoing deep sedation or general anesthesia are mentally and/or physically challenged, it is not always possible to have a comprehensive physical examination or appropriate laboratory tests prior to administering care. When these situations occur, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the pre-procedure management.

(B) Management of Children. For children twelve (12) years of age and under, the dentist should observe the American Academy of Pediatrics/American Academy of Pediatric Dentists Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(8) Emergency Management.

(A) The dentist is responsible for the sedation management, adequacy of the facility and staff, diagnosis and treatment of emergencies associated with the administration of deep sedation or general anesthesia, and providing the equipment and protocols for patient rescue. This includes immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

(B) Advanced airway equipment, emergency medications and a defibrillator must be immediately available.

(C) Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

The provisions of this §110.6 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.7. Portability.

(a) A sedation/anesthesia permit is valid for the dentist's facility, if any, as well as any satellite facility.

(b) A Texas licensed dentist who holds the Board-issued privilege of portability on or before June 1, 2011 will automatically continue to hold that privilege provided the dentist complies with the renewal requirements of this section.

(c) Portability of a sedation/anesthesia permit will be granted to a dentist who, after June 1, 2011, applies for portability, if the dentist:

(1) holds a Level 4 Deep Sedation/General Anesthesia permit;

(2) holds a Level 3 Moderate Parenteral Sedation permit and the permit was granted based on education received in conjunction with the completion of a oral and maxillofacial specialty education program or a dental anesthesia program; or

(3) holds a Level 3 Moderate Parenteral Sedation permit and if:

(A) the training for the permit was obtained on the basis of completion of any of the following American Dental Association (ADA) Commission on Dental Accreditation (CODA) recognized or approved programs:

(i) a specialty program;

(ii) a general practice residency;

(iii) an advanced education in general dentistry program; or

(iv) a continuing education program.

Dentists seeking a portability privilege designation based on this method of education shall also successfully complete no less than sixty (60) hours of didactic instruction and manage no less than twenty (20) dental patients by the intravenous route of administration; and

(B) the applicant provides proof of administration of no less than thirty (30) cases of personal administration of Level 3 sedation on patients in a primary or satellite practice location within the six (6) month period preceding the application for portability, but following the issuance of the sedation permit. Acceptable documentation shall include, but not be limited to, patient records demonstrating the applicant's anesthetic technique, as well as provision of services by the applicant within the minimum standard of care.

(d) A dentist providing anesthesia services utilizing a portability permit remains responsible for providing these services in strict compliance with all applicable laws and rules. The dentist shall ascertain that the location is supplied, equipped, staffed, and maintained in a condition to support provision of anesthesia services that meet the standard of care.

(e) Any applicant whose request for portability status is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, Chapter 2001 et seq.

The provisions of this §110.7 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.8. Provisional Anesthesia and Portability Permits.

(a) The Board may elect to issue a temporary sedation/anesthesia and/or portability permit that will expire on a stated date. A full sedation/anesthesia or portability permit may be issued after the dentist has complied with requests of the Board which may include, but shall not be limited to, review of the dentist's anesthetic technique, facility inspection, and/or review of patient records to ascertain that the minimum standard of care is being met. If a full permit is not issued, the temporary permit will expire on the stated date.

(b) A dentist licensed by the Board who is enrolled and approaching graduation in a specialty or General Practice Residency/Advanced Education in General Dentistry (GPR/AEGD) program as detailed in this chapter may, upon approval of the Board or its designees, obtain a provisional permit from the Board to administer moderate parenteral sedation and/or deep sedation and general anesthesia. A dentist licensed by the Board who holds a Level IV permit issued by the Board may, upon approval of the Board or its designees, obtain a provisional permit from the Board to provide anesthesia on a portable basis. To qualify for a provisional permit the applicant must:

(1) meet all requirements under this chapter;

(2) have a letter submitted on the applicant's behalf:

(A) on the letterhead of the school administering the program;

(B) signed by the director of the program;

(C) specifying the specific training completed; and

(D) confirming imminent graduation as a result of successful completion of all requirements in the program.

(3) For the purposes of this chapter, "completion" means the successful conclusion of all requirements of the program in question, but not including the formal graduation process.

(4) Any provisional permit issued under this section shall remain in effect until the next-scheduled regular Board meeting, at which time the Board will consider ratifying the provisional permit.

(5) On ratification of a provisional permit, the status of the permit will change to that of a regular permit under this section.

The provisions of this §110.8 adopted to be effective May 10, 2011, 36 TexReg 2833.

§110.9. Anesthesia Permit Renewal.

(a) The Board shall renew an anesthesia/sedation permit annually if required fees are paid and the required emergency management training and continuing education requirements are satisfied. The Board shall not renew an anesthesia/sedation permit if, after notice and opportunity for hearing, the Board finds the permit holder has provided, or is likely to provide, anesthesia/sedation services in a manner that does not meet the minimum standard of care. If a hearing is held, the Board shall consider factors including patient complaints, morbidity, mortality, and anesthesia consultant recommendations.

(b) Fees. Annual dental license renewal certificates shall include the annual permit renewal, except as provided for in this section. The licensee shall be assessed an annual renewal fee in accordance with the fee schedule in Chapter 102 of this title.

(c) Continuing Education.

(1) A dentist seeking to renew a minimal sedation, moderate sedation, or deep sedation/general anesthesia permit must complete the following hours of continuing education every two years on the administration of or medical emergencies associated with the permitted level of sedation:

(A) Level 1: Minimal Sedation - six (6) hours

(B) Levels 2 and 3: Moderate Sedation - eight (8) hours

(C) Level 4: Deep Sedation/General Anesthesia - twelve (12) hours

(2) The continuing education requirements under this section shall be in addition to any additional courses required for licensure. Advanced Cardiac Life Support (ACLS) course, Pediatric Advanced Life Support (PALS) course, or a Board-approved two day emergency course may be used to fulfill the continuing education requirement when not being taken for renewal of the permit.

(3) Continuing education courses must meet the provider endorsement requirements of §104.2 of this title.

The provisions of this §110.9 adopted to be effective May 10, 2011, 36 TexReg 2833; amended to be effective September 30, 2012, 37 TexReg 7485.

§110.10. Use of General Anesthetic Agents.

(a) No dentist shall administer or employ the general anesthetic agent(s) listed in subsection (b) of this section, which has a narrow margin for maintaining consciousness, unless the dentist possesses a valid Level 4 - General Anesthesia or Deep Sedation permit issued by the Board.

(b) The following drugs are general anesthesia agents with a narrow margin for maintaining

consciousness and must only be used by a dentist holding a Level 4 - General Anesthesia or Deep Sedation permit:

(1) short acting barbiturates including, but not limited to thiopental, sodium methohexital, and thiamylal;

(2) short acting analogues of fentanyl including, but not limited to remifentanyl, alfentanil, and sufentanil;

(3) alkylphenols including precursors or derivatives, which includes, but not limited to propofol and fospropofol;

(4) etomidate;

(5) dissociative anesthetics - ketamine;

(6) volatile inhalation anesthetics including, but not limited to sevoflurane, desflurane and isoflurane; and

(7) similarly acting drugs or quantity of agent(s), or technique(s), or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of the definition of moderate sedation as stated in §110.1 of this chapter (relating to Definitions).

(c) No permit holder shall have more than one person under general anesthesia at the same time exclusive of recovery.

The provisions of this §110.10 adopted to be effective August 25, 2013, 38 TexReg 5262.

CHAPTER 112. VISUAL DENTAL HEALTH INSPECTIONS

§112.1. Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Visual Dental Health Inspection--An inspection made by students engaged in a formal education program in dentistry or dental hygiene or by health care workers, other than dentists, dental hygienists, dental assistants, physicians and physician assistants.

(2) Limited Oral Evaluation--A non-comprehensive evaluation of an individual who is not a patient of record made by a licensed dentist for the following limited purposes:

(A) screening for symptoms of oral cancer; and/or

(B) evaluating minors or members of underserved populations for current or potential dental problems.

(3) Dental instruments--Any device used by dentists to examine, diagnose or treat patients, or any device used by dental hygienists to treat patients, that may be used in an invasive manner under normal circumstances.

(4) Diagnosis--The translation of data gathered by clinical and radiographic examination into an organized, classified definition of the conditions present.

(5) Health care worker--A person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by the state.

(6) Invasive manner--A procedure resulting in surgical entry into tissues, cavities, or organs or the manipulation, cutting or removal of any oral or perioral tissue, including tooth structure.

The provisions of this §112.1 adopted to be effective April 16, 2000, 25 TexReg 3250; amended to be effective December 16, 2012, 37 TexReg 9641.

§112.2. Visual Dental Health Inspection.

(a) A visual dental health inspection is performed as a group activity taking place in a school or other institutional setting for the purpose of making a gross assessment of the dental health status of group members, at no cost to the members. It is cursory and does not involve the use of dental instruments, though use of gloves, tongue depressors and intra oral lighting is encouraged. Further, it does not involve making a diagnosis, providing treatment, or treatment planning. Individuals performing visual dental health inspections in accordance with this chapter do not engage in the practice of dentistry if the inspection process is limited to recognizing when tissue does not appear normal and

encouraging the member to appoint with a licensed Texas dentist.

(b) A visual dental health inspection may be performed by:

(1) a dentist, dental student, dental hygienist or dental hygiene student to conduct research or for educational purposes in the field of dentistry or dental hygiene; or

(2) dentists or dental hygienists employed by the State of Texas Department of State Health Services (DSHS), Department of Aging and Disability (DADS), or by any public health dentist or dental hygienist employed by any other state, county, or city health department for the purposes of oral health surveillance, oral health program planning, or epidemiological surveys required by state or federal agencies.

(c) A visual dental health inspection performed under subsection (b) of this section is performed for the purpose of making a gross assessment of the dental health status of group members, at no cost to the members. It does not involve making a diagnosis, providing treatment, or treatment planning.

The provisions of this §112.2 adopted to be effective April 16, 2000, 25 TexReg 3250; amended to be effective December 16, 2012, 37 TexReg 9641.

§112.3. Limited Oral Evaluation.

(a) This rule shall not be construed to prohibit a registered dental hygienist from collecting clinical data in conjunction with a licensed dentist's limited oral evaluation under this rule.

(b) This rule shall not be construed to prohibit a registered dental hygienist or a dental assistant with the appropriate certificate from applying sealants in conjunction with a limited oral evaluation performed by a licensed dentist under this rule.

(c) This rule shall not be construed to prohibit a registered dental hygienist or a dental assistant from applying fluoride varnish in conjunction with a limited oral evaluation performed by a licensed dentist under this rule.

(d) A limited oral evaluation is performed by a licensed dentist in conjunction with a federal, state, county, or city government healthcare program, a non-profit organization, or an educational institution. It is a non-diagnostic, non-comprehensive evaluation of an individual who is not a patient of record made for the limited purpose of screening for symptoms of oral cancer and/or evaluating minors or underserved populations for current or potential dental problems.

(e) A limited oral evaluation must be provided at no cost to the patient or any third party. The evaluation must result in a written assessment of findings that is provided to the patient and retained by the dentist or entity qualifying under subsection (d) of this section.

(f) A limited oral evaluation is exempt from the requirements of the minimum standard of care for a comprehensive examination in §108.7 of this title (relating to Minimum Standard of Care, General) and §108.8 of this title (relating to Records of the Dentist), except as required by this rule. The dentist must obtain written, informed consent as to the limited nature and non-diagnostic results of the evaluation from the patient or his/her parent or guardian. The dentist must provide a copy of the written informed consent and the results of the evaluation to the patient or his/her parent or guardian. The written informed consent must clearly evidence the name of the evaluating dentist, the patient's name, and the date of evaluation.

(g) A limited oral evaluation shall not be performed for business promotion or patient solicitation purposes. A dentist performing a limited oral evaluation must comply with all rules and laws governing professional conduct and business promotion. Following the evaluation, the dentist may recommend or refer the patient to a dentist for follow-up examination.

(h) Either the dentist or the entity qualifying under subsection (d) of this section shall retain a copy of the written informed consent and the results of the evaluation for five years from the date of the evaluation.

The provisions of this §112.3 adopted to be effective December 16, 2012, 37 TexReg 9642.

CHAPTER 113. REQUIREMENTS FOR DENTAL OFFICES

§113.1. Definitions. The following words and terms, when used in reference to this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) X-ray equipment--An x-ray system, subsystem, or component thereof including portable, hand-carried or stationary x-ray machines or devices.

(2) X-ray laboratory--A facility, space or area in which x-ray equipment is used to create a radiograph.

The provisions of this §113.1 adopted to be effective November 5, 2006, 31 TexReg 8833.

§113.2. X-Ray Laboratories.

(a) All dental licensees, including dentists, dental hygienists or other dental auxiliaries shall comply with Title 25 Texas Administrative Code §289.232 (Radiation Control Regulations for Dental Radiation Machines) as promulgated by the Texas Department of State Health Services Radiation Control Program or its successor.

(b) All dental x-ray laboratories operating in this state must be under the general supervision of a Texas licensed dentist.

(c) All dental patients must be protected by a lead apron with the thyroid collar while directly exposed to x-rays with the exception of those radiographs where it is necessary to image areas concealed or obstructed by a thyroid collar. A non-lead apron may be used instead of a lead apron if the non-lead apron provides protection from x-rays that is equivalent to that of a lead apron.

The provisions of this §113.2 adopted to be effective November 5, 2006, 31 TexReg 8833.

CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

§114.1. Permitted Duties.

(a) A dentist may delegate to a dental assistant the authority to perform only acts or procedures that are reversible.

(1) An act or procedure that is reversible is capable of being reversed or corrected.

(2) Acts or procedures that are irreversible include, but are not limited to, the result of intra-oral use of any laser for any purpose, including all or part of a whitening process.

(b) A dentist may not delegate or otherwise authorize a dental assistant to perform any task for which a certificate is required under this section, unless the dental assistant holds the required certificate.

(c) A dental assistant may perform tasks under a dentist's general or direct supervision. For the purposes of this section:

(1) "General supervision" means that the dentist employs or is in charge of the dental assistant and is responsible for supervising the services to be performed by the dental assistant. The dentist may or may not be present on the premises when the dental assistant performs the procedures.

(2) "Direct supervision" means that the dentist employs or is in charge of the dental assistant and is physically present in the office when the task is performed. Physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.

(d) The dentist shall remain responsible for any delegated act.

(e) The clinical tasks that a dental assistant can perform under general supervision are limited to:

(1) the making of dental x-rays in compliance with the Occupations Code, §265.005; and

(2) the provision of interim treatment of a minor emergency dental condition to an existing patient of the treating dentist in accordance with the Occupations Code, §265.003(a-1). For purposes of this paragraph only, "existing patient" means a patient that the supervising dentist has examined in the twelve (12) months prior to the interim treatment.

The provisions of this §114.1 adopted to be effective February 20, 1992, 17 TexReg 1095; amended to be effective December 3, 1997, 22 TexReg 11679; amended to be effective May 10, 2004, 29 TexReg 4479; amended to be effective November 27, 2005, 30 TexReg 7743; amended to be effective February 2, 2010, 35 TexReg 635.

§114.2. Registration of Dental Assistants.

(a) A dental assistant may not position or expose dental x-rays unless the dental assistant holds a dental assistant radiology certificate issued by the State Board of Dental Examiners under this section.

(b) To be eligible for a dental assistant radiology certificate under this section, an applicant must present on or accompanying an application form approved by the State Board of Dental Examiners proof satisfactory to the Board that the applicant has:

(1) Paid all application, examination and licensing fees required by law and Board rules and regulations;

(2) Successfully completed a current course in basic life support; and,

(3) Either:

(A) taken and passed a course of instruction and an examination administered by the State Board of Dental Examiners or its designated agent, that fulfills the requirements in subsection (h) of this section; or,

(B) if the applicant is certified as a dental assistant by the Dental Assisting National Board, taken and passed a jurisprudence examination administered by the State Board of Dental Examiners or its designated agent.

(c) The State Board of Dental Examiners has established a staggered dental assistant registration system comprised of initial registration periods followed by annual registrations (i.e., renewals). The initial, staggered registration periods will range from 6 months to 17 months. Each dental assistant for whom an initial certificate of registration is issued will be assigned a computer-generated check digit. The length of the initial registration period will be according to the assigned check digit as follows:

(1) a dental assistant assigned to check digit 1 will be registered for 6 months;

(2) a dental assistant assigned to check digit 2 will be registered for 7 months;

(3) a dental assistant assigned to check digit 3 will be registered for 8 months;

(4) a dental assistant assigned to check digit 4 will be registered for 9 months;

(5) a dental assistant assigned to check digit 5 will be registered for 11 months;

(6) a dental assistant assigned to check digit 6 will be registered for 12 months;

(7) a dental assistant assigned to check digit 7 will be registered for 13 months;

(8) a dental assistant assigned to check digit 8 will be registered for 14 months;

(9) a dental assistant assigned to check digit 9 will be registered for 15 months; and

(10) a dental assistant assigned to check digit 10 will be registered for 17 months.

(11) Initial dental assistant registration fees will be prorated according to the number of months in the initial registration period.

(d) Subsequent to the initial registration period, a registered dental assistant's annual renewal will occur on the first day of the month that follows the last month of the dental assistant initial registration period.

(1) Approximately 60 days prior to the expiration date of the initial dental assistant registration period, renewal notices will be mailed to all registered dental assistants who have that expiration date.

(2) A dental assistant registered under this section who wishes to renew his or her registration must:

(A) Pay a renewal fee set by Board rule;

(B) Submit proof that the applicant has successfully completed a current course in basic life support; and,

(C) For certificates that expire before September 1, 2009, complete at least six (6) hours of continuing education in the previous registration year.

(i) The continuing education curriculum must cover dental assistant duties.

(ii) The continuing education requirement may be met through self-study, interactive computer courses, or lecture courses as offered or endorsed by continuing education providers listed in §104.2 of this title; or

(D) For certificates that expire on or after September 1, 2009, complete continuing education as required by §114.12 of this chapter.

(3) A registration expired for one year or more may not be renewed.

(e) Applications for registration or for renewal of registration must be submitted to the office of the State Board of Dental Examiners.

(f) An application for registration is filed with the State Board of Dental Examiners when it is actually received, date-stamped, and logged-in by the State Board of Dental Examiners along with all required documentation and fees. An incomplete application for registration and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

(g) A dental assistant shall display a current registration certificate in each office where the dental assistant provides services for which registration is required by this chapter. When a dental assistant provides such services at more than one location, a duplicate registration certificate issued by the Board may be displayed. Photocopies are not acceptable. The duplicate may be obtained from the State Board of Dental Examiners for a fee set by the Board.

(h) Radiology. Courses administered to fulfill the requirements of a Dental Assistant Radiology

Certificate must cover the following course objectives identified by the Dental Assistant Advisory Committee:

(1) At the end of this course of instruction, the student should be able to:

(A) Apply principles of radiation safety in the operation of radiographic equipment.

(i) Explain factors affecting x-ray production.

(ii) Explain x-ray machine factors that influence radiation safety.

(iii) Identify differences between primary radiation and scattered (secondary) radiation.

(iv) Describe protocol in suspected x-ray machine malfunctions.

(B) Practice safety measures for patient protection.

(i) Explain major cause of unnecessary radiation exposure.

(ii) Identify short and long-term effects of radiation on cells and tissues.

(iii) Identify ways to reduce radiation exposure to patients.

(iv) Explain guidelines to determine frequency of radiation exposure.

(C) Practice safety measures for operator protection.

(i) Explain basic radiation physics and biology related to operator exposure.

(ii) Explain sources of radiation to operators while exposing radiographs.

(iii) Identify safety measures to reduce operator radiation exposure.

(D) Identify and select infection control techniques and barriers to minimize cross-contamination according to ADA/CDC guidelines.

(E) Utilize patient management techniques before, during, and after radiographic exposure.

(i) Address patient concerns regarding radiation exposure.

(ii) Select appropriate patient management techniques for radiographic exposure.

(F) Select appropriate intraoral radiographic technique.

(i) Identify appropriate armamentarium for radiographic techniques.

(ii) Select appropriate film size and film speed.

(iii) Expose radiographs.

(G) Practice infection control procedures for radiographic processing.

(H) Prepare, maintain, and replenish radiographic solutions for manual and automatic processors.

(I) Process exposed intra- and extraoral radiographs manually and with automatic processors.

(i) Identify optimum conditions and procedures for processing radiographs.

(ii) Identify and correct errors related to radiographic processing and improper film handling.

(J) Store film and chemical agents used in radiographic procedures according to regulatory guidelines.

(K) Dispose of all chemical agents and other materials used in dental radiographic procedures.

(L) Mount radiographs using facial view.

(i) Identify anatomical landmarks to aid in correct mounting.

(ii) Match specific tooth views to specified tooth mount windows.

(iii) Utilize optimum viewing techniques.

(iv) Label the radiographic mount appropriately.

(M) Identify anatomical structures, dental materials and patient characteristics observed on radiographs.

(N) Evaluate radiographs for diagnostic value.

(i) Identify diagnostically acceptable radiographs.

(ii) Identify and correct causes of errors on intraoral radiographs.

(O) Understand basic principles of extraoral radiology.

(P) Select the appropriate film and equipment.

(Q) Prepare patient for exposure.

(R) Expose extraoral radiographs.

(S) Identify and correct causes of errors on extraoral radiographs.

(T) Explain the concept of digital radiography.

(U) Select appropriate equipment.

(V) Expose digital radiographs.

(W) Identify and correct causes of errors on digital radiographs.

(X) Utilize quality assurance procedures in the dental office for radiographic procedures.

(Y) Prepare radiographs to comply with legal requirements for viewing and duplication.

(i) Explain methods for duplicating radiographs.

(ii) Explain reasons for exposing and retaining radiographs.

(Z) Comply with HIPAA/Patient Privacy Rules and Regulations.

(2) Infection control. At the end of this course of instruction, the student should be able to:

(A) Follow standards and guidelines of occupational safety for dental office personnel.

(i) Utilize regulations in the OSHA/CDC Bloodborne Pathogens Standard.

(ii) Utilize regulations in the OSHA/CDC Hazard Communication Standard.

(B) Identify infectious diseases in the dental setting and available immunizations.

(C) Prevent cross-contamination and disease transmission in the dental setting.

(i) Perform proper hand washing.

(ii) Use disposable items whenever possible.

(iii) Utilize barrier techniques and personal protective equipment (PPE).

(D) Perform disinfection procedures.

(i) Select appropriate PPE.

(ii) Select, prepare and use chemical agents following manufacturer's directions.

(iii) Prepare surfaces for disinfection.

(iv) Disinfect the treatment room, darkroom, instrument processing area, and all associated equipment.

(E) Perform sterilization procedures.

(i) Select appropriate PPE.

(ii) Prepare dental instruments and equipment for sterilization.

(iii) Apply appropriate method for sterilization of dental instruments, equipment and supplies.

(iv) Label and store all instruments properly.

(v) Monitor effectiveness of sterilization process for dental instruments, equipment and supplies.

(F) Maintain infection control of dental unit and equipment.

(G) Practice safety measures when handling all hazardous materials.

(i) Identify and dispose of biohazardous waste.

(ii) Identify and dispose of non-regulated waste.

(iii) Identify and manage potential chemical and physical hazards in accordance with MSDS sheets.

(H) Practice infection control in handling and transporting dental items.

(i) Select appropriate PPE.

(ii) Identify conditions for potential cross-contamination.

(iii) Select and apply appropriate disinfectant.

(iv) Label biohazardous material.

(I) Utilize and maintain a quality assurance program for infection control throughout the dental setting.

(3) Jurisprudence. At the end of this course of instruction, the student should be able to:

(A) State the mission, philosophy and composition of the State Board of Dental Examiners.

(B) Differentiate between the Texas Occupations Code and the rules of the State Board of Dental Examiners.

(C) Comply with Texas law and the rules of the State Board of Dental Examiners as they relate to dental assistant duties.

(i) This subsection as well as subsections (j) and (k) of this section apply to certificates issued on or after September 1, 2009. A dental assistant who holds a certificate of registration issued under this chapter shall display the person's current certificate of registration in each office in which the person makes dental x-rays. If the person makes dental x-rays at more than one location, the person may display a duplicate of the original registration certificate obtained from the Board on payment of a duplicate certificate fee set by the Board.

(j) A dental assistant who holds a certificate of registration issued under this chapter shall timely notify the Board of:

(1) any change of address of the registrant's place of business;

(2) any change of the registrant's employer; and

(3) any change of the registrant's mailing address.

(k) An initial certificate of registration issued under this section expires on the 30th day after the date the certificate is issued if the holder of the certificate fails to pay the required certificate fee on or before that date.

(l) The Board may issue a registration to a dental assistant applicant who is a Military service member, Military veteran, or Military spouse in compliance with §101.6 of this title (relating to Dental Licensing for Military Service Members, Military Veterans and Military Spouses).

The provisions of this §114.2 adopted to be effective May 10, 2004, 29 TexReg 4479; amended to be effective November 5, 2006, 31 TexReg 8834; amended to be effective February 2, 2010, 35 TexReg 635; amended to be effective December 10, 2013, 38 TexReg 8833.

§114.3. Pit and Fissure Sealant Certificate.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Didactic education" requires the presentation and instruction of theory and scientific principles.

(2) "Clinical education" requires providing care to patient(s) under the direct supervision of a dentist or dental hygienist instructor.

(3) "Direct Supervision" requires that the instructor responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well-being.

(b) This subsection applies only to applications for certification received by the Board before September 1, 2009. A Texas-licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies, or who practices in an area determined to be underserved by the Department of State Health Services, may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant:

(1) is employed by and works under the direct supervision of the licensed dentist; and

(2) is certified pursuant to subsection (f) of this section.

(c) This subsection applies only to applications for certification received by the Board on or after September 1, 2009. A Texas-licensed dentist may delegate the application of pit and fissure sealant to a dental assistant, if the dental assistant is certified pursuant to subsection (f) of this section.

(d) In addition to application of pit and fissure sealants a dental assistant certified in this section may use a rubber prophylaxis cup and appropriate polishing materials to cleanse the occlusal and smooth surfaces of teeth that will be sealed or to prepare teeth for application of orthodontic bonding resins. Cleansing is intended only to prepare the teeth for the application of sealants or bonding resins and should not exceed the amount needed to do so.

(e) The dentist may not bill for a cleansing provided hereunder as a prophylaxis.

(f) A dental assistant wishing to obtain certification under this section must:

(1) Pay an application fee set by board rule;

(2) And on a form prescribed by the Board provide proof that the applicant has:

(A) At least two years of experience as a dental assistant;

(B) Successfully completed a current course in basic life support; and

(C) Complete a minimum of 16 hours of education for certificates issued under applications received by the Board before September 1, 2009 or complete a minimum of 8 hours of education for certificates issued under applications received by the Board on or after September 1, 2009. To fulfill this requirement, the education must include clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental hygiene or dental assisting program approved by the Board whose course of instruction includes:

(i) infection control;
(ii) cardiopulmonary resuscitation;
(iii) treatment of medical emergencies;
(iv) microbiology;
(v) chemistry;
(vi) dental anatomy;
(vii) ethics related to pit and fissure sealants;
(viii) jurisprudence related to pit and fissure sealants; and
(ix) the correct application of sealants, including the actual clinical application of sealants.

(g) Before January 1 of each year, a dental assistant registered under this section who wishes to renew that registration must:

- (1) Pay a renewal fee set by board rule; and
- (2) Submit proof that the applicant has successfully completed a current course in basic life support; and either
- (3) For certificates issued under applications filed before September 1, 2009, the dental assistant must complete at least six (6) hours of continuing education in technical and scientific coursework in the previous calendar year.

(A) The terms "technical" and "scientific", as applied to continuing education, shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Dental assistants shall select and participate in continuing education courses offered by or endorsed by:

- (i) dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or,
- (ii) nationally recognized dental, dental hygiene or dental assisting organizations.

(C) No more than three (3) hours of the required continuing education coursework may be in self-study; or

(4) For certificates issued under applications filed on or after September 1, 2009, the dental assistant must complete continuing education requirements in accordance with §114.12 of this chapter.

The provisions of this §114.3 adopted to be effective December 30, 2001, 26 TexReg 10572 ; amended to be effective effective May 10, 2004, 29 TexReg 4479; amended to be effective November 27, 2005, 30 TexReg 7744; amended to be effective February 2, 2010, 35 TexReg 638.

§114.4. Monitoring the Administration of Nitrous Oxide.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Dental industry professional organization"--any organization, the primary mission of which is to represent and support dentists, dental hygienists, and/or dental assistants;

(2) "Didactic education" requires the presentation and instruction of theory and scientific principles.

(3) "Direct Supervision" requires that the dentist responsible for the procedure shall be physically present during patient care and shall be aware of the patient's physical status and well-being.

(b) A Texas-licensed dentist may delegate the monitoring of the administration of nitrous oxide to a dental assistant, if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and

(2) is certified pursuant to subsection (c) of this section.

(c) A dental assistant wishing to obtain certification under this section must:

(1) Pay an application fee set by board rule; and

(2) On a form prescribed by the board, provide proof that the applicant has:

(A) Successfully completed a current course in basic life support; and,

(B) Completed a minimum of 8 hours of didactic education and testing in monitoring the administration of nitrous oxide taken through a CODA-accredited dental, dental hygiene or dental assisting program, approved by the board, whose course of instruction includes:

(i) Texas Jurisprudence, including but not limited to: anesthesia standard of care, anesthesia/analgesia, enteral conscious sedation, and this rule, regarding monitoring the administration of nitrous oxide;

(ii) Dental anatomy and physiology;

(iii) Pharmacology;

(iv) Sedation equipment;

(v) Infection control;

(vi) Patient monitoring; and

(vii) Recognition and management of medical emergencies.

(d) The jurisprudence assessment may be completed to satisfy the requirements set out in subsection (c)(2)(B)(i) of this section.

(e) A program seeking to offer a course in monitoring the administration of nitrous oxide must submit a written request for approval to the board demonstrating that it meets the requirements set forth in

subsection (c)(2)(B) of this section. Additionally, all courses must include a mandatory competency evaluation with a minimum of 50 test items. Course documentation must be maintained by the course provider for no less than three years.

(f) Approved courses may be offered at annual meetings of dental industry professional organizations.

(g) Courses taken to satisfy the requirements of this section are valid for five (5) years from the date of course completion for certification purposes.

The provisions of this §114.4 adopted to be effective February 25, 2007, 32 TexReg 627.

§114.5. Coronal Polishing Certificate.

(a) The following term, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise: "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent. This includes the use of a toothbrush.

(b) A Texas-licensed dentist may delegate coronal polishing to a dental assistant if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and

(2) is certified pursuant to subsection (d) of this section.

(c) The delegated duty of polishing by a dental assistant may not be billed as a prophylaxis.

(d) A dental assistant seeking certification under this section must:

(1) pay an application fee set by board rule; and

(2) on a form prescribed by the Board, provide proof that the applicant has:

(A) at least two years experience as a dental assistant; and either

(B) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board that includes courses on:

(i) oral anatomy and tooth morphology relating to retention of plaque and stain;

(ii) indications, contraindications, and complications of coronal polishing;

(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(iv) infection control procedures;

(v) polishing coronal surfaces of teeth; and

(vi) jurisprudence relating to coronal polishing; or

(C) present proof to the Board that the assistant has either:

(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or

(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.

The provisions of this §114.5 adopted to be effective February 2, 2010, 35 TexReg 639.

§114.6. General Qualifications for Registration or Certification.

(a) Any person who desires to provide dental assistant services requiring registration or certification must obtain the proper registration or certification issued by the Board before providing the services, except as provided in Texas Occupations Code §265.005(l) and §114.11 of this chapter.

(b) Any applicant for registration or certification must meet the requirements of this chapter.

(c) To be eligible for registration or certification, an applicant must provide with an application form approved by the Board satisfactory proof to the Board that the applicant:

(1) has fulfilled all requirements for registration or certification outlined in this chapter;

(2) has met the requirements of §101.8 of this title;

(3) has successfully completed a current course in basic life support;

(4) has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application; and

(5) has paid all application, examination and fees required by law and Board rules and regulations.

(d) Applications for dental assistant registration and certification must be delivered to the office of the State Board of Dental Examiners.

(e) An application for dental assistant registration or certification is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application will be returned to the applicant with an explanation of additional documentation or information needed.

(f) The Board may refuse to issue registration or certificate to any individual who does not meet the requirements of subsection (c)(2) of this section, who has a pending criminal case, or who has been convicted or received a deferred adjudication in accordance with §101.8 of this title. Alternatively, the Board may

choose to issue a conditional registration or certificate to the individual in accordance with this subsection.

(1) At the time the registration or certificate is issued, the individual may be required to enter into an agreed settlement order with the Board.

(2) With respect to any individual who does not meet the requirements of subsection (c)(2) of this section, or who has a pending criminal case or who has been convicted or received a deferred adjudication in accordance with §101.8 of this title, the Board may consider conditional registration or certification of the individual when such registration or certification is not prohibited by law. The Board shall consider the following factors:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration/certification to engage in the occupation;

(C) the extent to which a registration/certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the registered occupation;

(E) the extent and nature of the person's past criminal activity;

(F) the age of the person when the crime was committed;

(G) the amount of time that has elapsed since the person's last criminal activity;

(H) the conduct and work activity of the person before and after the criminal activity;

(I) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(J) other evidence of the person's fitness, including letters of recommendation from:

(i) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) any other person in contact with the convicted person.

(3) The applicant shall, to the extent possible, obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and

restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order.

(4) The order may include limitations including, but not limited to, practice limitations, stipulations, compliance with court ordered conditions, notification to employer or any other requirements the Board recommends to ensure public safety.

(5) In the event an applicant is uncertain whether he or she is qualified to obtain a dental assistant registration or certification due to criminal conduct, the applicant may request a Criminal History Evaluation Letter in accordance with §114.9 of this chapter, prior to application.

(6) Should the individual violate the terms of his or her conditional registration or certificate, the Board may take additional disciplinary action against the individual.

(g) An applicant whose application is denied by the Board may appeal the decision to the State Office of Administrative Hearings.

(h) An individual whose application for dental assistant registration/certification is denied is not eligible to file another application for registration/certification until the expiration of one year from the date of denial or the date of the Board's order denying the application for registration/certification, whichever date is later.

The provisions of this §114.6 adopted to be effective December 22, 2010, 35 TexReg 11255.

§114.9. Criminal History Evaluation Letter.

(a) A person enrolled or planning to enroll in an educational program that prepares the person for initial certification as a dental assistant and who has reason to believe that he or she may be ineligible for licensure due to a conviction or deferred adjudication for a felony or a misdemeanor offense, may petition the Board for a Criminal History Evaluation Letter.

(b) The requestor must submit a petition that includes:

(1) a statement by the requestor indicating the reason(s) and basis of potential ineligibility;

(2) any applicable court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation;

(3) any other documentation requested by the Board; and

(4) the required fee.

(c) An investigation of the requestor's eligibility shall be conducted.

(d) If the Board determines that a ground for ineligibility does not exist, it shall notify the requestor in writing of the Board's determination on each ground of potential ineligibility.

(e) If the Board determines that the requestor is ineligible for a license, it shall issue a letter setting out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Board shall provide notice under subsection (d) of this section or issue a letter under subsection (e) of this section no later than the ninetieth (90th) day after the date the Board receives the request.

(g) The Board shall charge a person requesting an evaluation a fee not to exceed \$100.00 to cover the cost of administering this section. The fee shall be non-refundable.

The provisions of this §114.9 adopted to be effective May 19, 2010, 35 TexReg 3814.

§114.10. Dishonorable Conduct. The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees and registrants. The purpose of this section is to identify unprofessional or dishonorable behaviors of a dental assistant which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a dental assistant to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or
(B) in obtaining a fee.

(3) Fraud in obtaining a license, registration, or certification--obtains a registration or certification by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the dental assistant is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs; or

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics.

(5) Failure to comply with applicable laws, rules, regulations, and orders--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate

with a Board investigation; or fails to comply with the terms of a Board Order.

(6) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(7) Discipline of a licensee or registrant by another state board--holds a license, registration, or certificate to practice dentistry, dental hygiene, or dental assisting in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license, registration, or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(8) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee/registrant or the dental profession.

The provisions of this §114.10 adopted to be effective September 14, 2010, 35 TexReg 8347.

§114.11. Exemption.

(a) A dental assistant will not be considered to be positioning, exposing, or otherwise making dental x-rays if the dental assistant only performs radiological procedures:

(1) In the course of training or for other educational purposes; and,

(2) Is at all times under the direct supervision of the employer dentist.

(b) A dental assistant performing radiological procedures under this section in the course of on-the-job training may only do so for a period of one year.

The provisions of this §114.11 adopted to be effective September 21, 2004, 29 TexReg 9005; amended to be effective November 5, 2006, 31 TexReg 8834.

§114.12. Continuing Education for Certificate Holders.

(a) To renew a certificate issued under this chapter, a dental assistant must complete six (6) hours of continuing education each year in areas covering dental assistant duties.

(b) A dental assistant holding two or more certificates authorized by this chapter is required to complete twelve (12) hours of continuing education each year to renew all of the certificates held by the assistant.

(c) A dental assistant may fulfill the continuing education requirement through board-approved self-study, interactive computer courses, or lecture courses.

(d) Dental assistants shall select and participate in continuing education courses offered by or endorsed by:

(1) dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or

(2) nationally recognized dental, dental hygiene or dental assisting organizations.

The provisions of this §114.12 adopted to be effective February 2, 2010, 35 TexReg 640.

§114.21. Requirements for Dental Assistant Registration Courses and Examinations.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Dental industry professional organization"--any organization, the primary mission of which is to represent and support dentists, dental hygienists, and/or dental assistants;

(2) "Dental Assistant Advisory Committee"--a committee consisting of dental professionals and educators, created by the Board under the authority of Tex. Occ. Code §265.005;

(3) "Jurisprudence"--the body of statutes and regulations pertaining to and governing practice by dental assistants, including relevant portions of the Texas Occupations Code, and the rules enacted by the SBDE.

(b) Any school or program accredited by the Commission on Dental Accreditation of the American Dental Association or any dental industry professional organization may offer a course and examination to fulfill the requirements for dental assistant registration outlined in this chapter, so long as the course and examination are compliant with the requirements of this section, and have been approved by the SBDE.

(c) Courses administered to fulfill the requirements of this chapter must:

(1) Cover all the course objectives outlined by the SBDE and the Dental Assistant Advisory Committee and set forth in this chapter; and,

(2) Comply with other requirements established by the SBDE and the Dental Assistant Advisory Committee.

(d) Course providers administering examinations to fulfill the requirements of this chapter must:

(1) Employ a minimum of 50 questions per examination that adequately cover the course objectives identified by the Dental Assistant Advisory Committee and set forth in this chapter;

(2) Establish a minimum passing score of 70%; and,

(3) Maintain safeguards to ensure the integrity and security of the examinations, their content, and the

physical examination environment, as outlined in this chapter.

(e) Any course and examination administered under this section may be offered through self-study, interactive computer courses, or lecture courses, and may be offered through the Internet.

(f) Course and examination approval. A provider seeking approval of a dental assistant course must submit the following materials to the SBDE prior to offering the course:

(1) A complete, signed, and notarized Dental Assistant Course Provider Application, as promulgated by the SBDE;

(2) An application fee in the amount established by the SBDE, payable by check or money order made payable to the State Board of Dental Examiners; and

(3) Documentation pertaining to the course, including:

(A) All course materials to be provided to course attendees;

(B) The complete pool of examination questions to be drawn from;

(C) An examination integrity plan that meets the requirements of this chapter;

(D) A copy of the certificate to be issued on course completion; and,

(E) A copy of the provider's reexamination policy, which notifies course attendees in advance how many reexaminations shall be allowed without retaking the course, the cost of reexamination, and other pertinent information.

(g) Following course approval, the following information must be submitted to the SBDE:

(1) An internet URL address for a website containing information about the approved course, or, if no such website exists, contact information for the course provider;

(2) A schedule of courses to be offered, including dates, times and locations for each;

(3) Prompt notification of any changes to the published course schedule; and,

(4) Notification of any substantive changes to the course curriculum or materials following SBDE approval. Such changes must be submitted in writing to the SBDE for approval prior to their implementation in the course.

(h) The course provider shall provide all course registrants with their examination results within 30 days of completion of the examination.

(i) All course providers are subject to audit by the State Board of Dental Examiners for purposes of ensuring compliance with the requirements of this chapter.

(j) Documentation of course attendance and course completion shall be kept by the course provider for a period of not less than two (2) years.

(k) Failure to comply with any of the requirements of this section may result in withdrawal of course approval.

The provisions of this §114.21 adopted to be effective May 29, 2006, 31 TexReg 4426; amended to be effective October 7, 2009, 34 TexReg 6853; amended to be effective December 22, 2010, 35 TexReg 11256.

§114.23. Dental Assistant Examination Integrity.

(a) Course providers shall employ reasonable methods to ensure the integrity of examinations administered under this chapter, including, but not limited to:

(1) Employing at least three (3) forms of each examination, with substantially distinct selection and ordering of questions;

(2) Utilizing a pool of examination questions sufficiently large to comply with the requirements of this section;

(3) Allowing examinees a reasonable and appropriate maximum amount of time to complete an examination; and,

(4) Securing the pool of examination questions, actual examinations, and any other source of specific examination data.

(b) Course providers shall establish and maintain a physical environment for examinations to ensure the accessibility, integrity, and security of examinations administered under this chapter, including, but not limited to:

(1) Uninterrupted proctoring of the examination site;

(2) A distribution of distinct forms of the examinations that limits the potential for examination item compromise;

(3) Prohibiting the use of books, notes, or other reference aids, and taking reasonable steps to prevent access to impermissible assistance;

(4) Removal of teaching aids and posters from areas accessible to examinees;

(5) Providing reasonable accommodations for examinees with disabilities;

(6) Requiring examinees to sign a statement of confidentiality with respect to disclosure of information on the examination;

(7) Verified identification of students and examinees; and,

(8) Enforcement of reasonable policies regarding issues including, but not limited to, noise, illness, and breaks.

(c) In addition to the foregoing requirements, course providers shall employ reasonable methods to ensure accessibility, integrity, and security of Internet-

or intranet-based examinations administered under this chapter, including, but not limited to:

(1) Identification of each examinee via a unique login and the use of periodic security questions that should reasonably confirm the examinee's identity;

(2) Maintaining the security of student information;

(3) Maintaining a comprehensive student and examinee database;

(4) Imposing time limits for inactivity during examinations;

(5) Imposing reasonable and equitable maximum time limits for completion of examinations;

(6) Disabling access to other websites, software, or data during examinations;

(7) Disabling the ability to print or otherwise copy examination items; and,

(8) Providing reasonable accommodations for examinees with disabilities.

The provisions of this §114.23 adopted to be effective May 29, 2006, 31 TexReg 4426.

CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

§115.1. Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Dental Hygienist--One who possesses the qualifications prescribed by the laws of this state and who possesses a valid certificate and current registration receipt issued by the Texas State Board of Dental Examiners to so practice.

(2) Irreversible--an act that is "irreversible" is not capable of being reversed or corrected.

(3) Root Planing--A definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

(4) Scaling--Instrumentation of the crown and root surfaces of the teeth to remove plaque and calculus from these surfaces.

(5) Supervising Dentist--The term "supervising dentist" as used in these rules relating to the practice of dental hygiene, shall mean a dentist licensed by the State Board of Dental Examiners, who is responsible for monitoring the services to be performed by the dental hygienist. The supervising dentist must have and maintain a doctor patient relationship with any patient to whom any dental hygienist under his or her supervision provides services.

(6) General Supervision--In this section, "general supervision" means supervision of a dental hygienist by a supervising dentist, where the dentist may or may not be present on the premises when the dental hygienist performs the dental hygiene procedures.

(7) Direct Supervision--In this section, "direct supervision" means that the supervising dentist responsible for the procedure shall be present on the premises during patient care and shall be aware of the patient's physical status and well being.

The provisions of this §115.1 adopted to be effective January 1, 1976; amended to be effective June 28, 1985, 10 TexReg 1971; amended to be effective October 20, 1997, 22 TexReg 10133; amended to be effective July 10, 2001, 26 TexReg 5004; amended to be effective November 5, 2006, 31 TexReg 8834; amended to be effective December 24, 2007, 32 TexReg 9629.

§115.2. Permitted Duties. In addition to those duties identified in the Texas Occupations Code, Section 262.152, a dental hygienist may perform the following services and procedures in the dental office of his/her supervising dentist or dentists who are legally engaged in the practice of dentistry in this state or under the supervision of a supervising dentist in an alternate setting.

(1) apply pit and fissure sealants

(A) dental hygienists who graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association after December 31, 1980 may do so without obtaining a certificate from the SBDE;

(B) dental hygienists who graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association before December 31, 1980, must obtain certification from the SBDE to apply sealants. Certification to apply pit and fissure sealants in Texas may be obtained by submitting a written request to the SBDE accompanied by proof of course completion.

(2) monitor patients receiving nitrous oxide/oxygen inhalation conscious sedation only after obtaining certification issued by the State Board of Dental Examiners and only under the direct supervision of a Texas licensed dentist. Certification may be obtained by successful completion of a board-approved course, that includes examination, on the monitoring of the administration of nitrous oxide.

The provisions of this §115.2 adopted to be effective January 1, 1976; amended to be effective April 18, 1979, 4 TexReg 1209; amended to be effective October 10, 1979, 4 TexReg 3502; amended to be effective October 11, 1979, 4 TexReg 3502; amended to be effective June 12, 1980, 5 TexReg 2187; amended to be effective April 19, 1984, 9 TexReg 1947; amended to be effective September 1, 1986, 11 TexReg 3349; amended to be effective February 1, 1988, 12 TexReg 4473; amended to be effective January 5, 1990, 14 TexReg 6756; amended to be effective February 21, 1990, 15 TexReg 707; amended to be effective July 17, 1990, 15 TexReg 3804; amended to be effective February 20, 1992, 17 TexReg 1095; amended to be effective March 18, 1997, 22 TexReg 2495; amended to be effective July 10, 2001, 26 TexReg 5004; amended to be effective February 25, 2007, 32 TexReg 627.

§115.3. Institutional Employment.

(a) Custodial care institutions (either public or private or which qualify as a "hospital" or "school") may be allowed to employ a dental hygienist when a licensed dentist is on the staff of such institution and after approval by the state board. Any hygienist employed by such institution is subject to the same laws and rules pertaining to supervision and responsibility as a hygienist in the employ of a dentist in private practice.

(b) A licensed hygienist may perform duties in certain custodial care facilities as provided in §115.5 of this chapter.

(c) Locations for the performance of a dental procedure other than those named in the Dental Practice Act must be approved by the SBDE by rule or written

authorization as a proper location prior to commencing a dental procedure at the location.

The provisions of this §115.3 adopted to be effective May 28, 1979, 4 TexReg 1766; amended to be effective March 9, 1984, 9 TexReg 1222; amended to be effective May 29, 1986, 11 TexReg 2310; amended to be effective February 20, 1992, 17 TexReg 1095; amended to be effective November 5, 2006, 31 TexReg 8835; amended to be effective February 2, 2010, 35 TexReg 640.

§115.4. Placement of Site Specific Subgingival Medicaments. Pursuant to §262.002(a)(6), the placement and removal of site specific subgingival medicaments may be delegated to a Texas licensed dental hygienist under the general supervision of, and in the office of, a Texas licensed dentist, only after scaling and root planing.

(1) The responsibility for diagnosis, treatment planning, the prescription of therapeutic measures, and re-evaluation, shall remain with a Texas licensed dentist and may not be delegated to any dental hygienist or dental assistant.

(2) Site specific subgingival medicaments are considered to be of "topical" nature and are agents approved for use by the Food and Drug Administration (FDA).

(3) The placement of site specific subgingival medicaments may not be assigned to a dental assistant.

(4) The Texas licensed dentist shall be responsible for identifying, selecting, and obtaining training that, in the dentist's reasoned opinion, will bring the dentist and dental hygienist to clinical competency prior to delegating the application of site specific subgingival medicaments to a dental hygienist.

The provisions of this §115.4 adopted to be effective October 20, 1997, 22 TexReg 10133; amended to be effective December 24, 2007, 32 TexReg 9629.

§115.5. Dental Hygienists Practicing in Certain Facilities.

(a) A dentist may delegate to a Texas licensed dental hygienist authorization to perform a service, task or procedure for patients whom the dentist has not seen within the past twelve months when conditions are met as follows:

(1) The dentist provides express authorization in writing which must include:

- (A) the dentist's name;
- (B) the dental hygienist's name;
- (C) the patient's name;
- (D) the name and address of the location where service is to be provided;
- (E) the date of the authorization; and
- (F) those procedures the dentist specifically authorizes the hygienist to perform,

including those procedures necessary to allow subsequent clinical evaluation by a dentist;

(2) The dentist has verified that the dental hygienist has at least two years experience as a dental hygienist; and

(3) The service, task or procedure must be performed in either:

(A) a nursing facility as defined in the Health and Safety Code, §242.301;

(B) a school-based health center established under Chapter 38, Subchapter B, Texas Education Code; or

(C) a community health center as defined by §136.002, Human Resources Code.

(b) The dental hygienist must refer patients treated under the provisions of this rule to a dentist by notification in writing of the dentist's name and address. Such notification must be provided to the patient or a person legally responsible for the patient, the authorizing dentist, the referral dentist, and copies to the patient's medical record. This notification must include a statement of services, tasks, and procedures performed.

(c) A dental hygienist, after having performed the services, tasks or procedures under this rule, may only perform delegated services, tasks or procedures with respect to the patient for six months unless the patient has been seen by either the dentist who delegated to the hygienist the authority or by a dentist to whom the patient was referred.

(d) The facility defined in subsection (a) of this section must agree to include information provided pursuant to subsection (b) of this section in the patient's medical records.

The provisions of this §115.5 adopted to be effective December 30, 2001, 26 TexReg 10573; amended to be effective February 2, 2010, 35 TexReg 641.

§115.6. Records. A Texas dental hygiene licensee practicing dental hygiene in Texas shall record treatments delegated by a Texas licensed dentist and performed for and upon each dental patient for reference, identification, and protection of the patient, the dentist, and the dental hygienist. Such recordings shall be entered in the dental records maintained and kept by the delegating dentist.

The provisions of this §115.6 adopted to be effective September 20, 2009, 34 TexReg 6321.

§115.7. Notification of Change of Information. Each dental hygienist licensed with the board shall notify the Board within sixty (60) days of any:

- (1) change of address of the licensee's place of business;
- (2) change of the licensee's employer; or

(3) change in the licensee's mailing address.

The provisions of this §115.7 adopted to be effective February 3, 2010, 35 TexReg 641.

§115.9. Dishonorable Conduct. The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license--obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs; or

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics.

(5) Failure to comply with applicable laws, rules, regulations, and orders--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order.

(6) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(7) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(8) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade,

or bring discredit upon the licensee or the dental profession.

The provisions of this §115.9 adopted to be effective September 14, 2010, 35 TexReg 8348.

§115.20. Dental Hygiene Advisory Committee--Purpose and Composition.

(a) The Dental Hygiene Advisory Committee is established pursuant to Texas Civil Statutes, §262.054 for the purpose of advising the Board on matters relating to dental hygiene.

(b) Members of the advisory committee serve staggered six-year terms. A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

(c) The Board shall annually evaluate the Committee's work, its usefulness, and the costs related to the Committee's work to include agency staff time in support of the Committee's activities.

(d) The Committee shall elect from among its members a presiding officer who shall serve for one year and who shall report to the Board on Committee activities as may be required but no less often than annually.

(e) An advisory committee member is entitled to the per diem set by the General Appropriations Act and may receive reimbursement for travel expenses, including expenses for meals and lodging.

The provisions of this §115.20 adopted to be effective March 9, 1994, 19 TexReg 1328; amended to be effective June 30, 1999, 24 TexReg 4821; amended to be effective December 30, 2001, 26 TexReg 10574; amended to be effective February 3, 2010, 35 TexReg 642.

CHAPTER 116. DENTAL LABORATORIES

§116.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Dental laboratory"--any place where a person performs, offers to perform or undertakes to perform any act or service listed in Occupations Code, §266.001, subject to the exemptions listed in §116.2 of this chapter.

(2) "Dental student"--a person enrolled as a full-time student in an accredited dental school.

(3) "Dental technician"--a person who performs the services as set out in Occupations Code, §266.001 including, but not limited to, a certified dental technician ("CDT") who has a current certificate issued by a recognized board of certification for dental technology, or its successor.

(4) "Designated CDT of a dental laboratory"--the person so designated on the annual registration form of a CDT laboratory who meets the CDT certification requirement and minimum employment requirements of these rules.

(5) "Designated employee of a dental laboratory"--the person so designated on the annual registration form of a dental laboratory exempted under §116.5 of this chapter, who meets the continuing education and minimum employment requirements of these rules.

The provisions of this §116.1 adopted to be effective May 10, 2004, 29 TexReg 4484.

§116.2. Exemptions. This chapter does not apply to:

(1) a student enrolled in a program of a school of dentistry;

(2) a licensed dentist engaged in the practice of dentistry in this state who performs a dental laboratory service for compensation or an employee of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee if the service is performed:

(A) for a patient of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee; and

(B) on the premises in which the dentist practices dentistry; or

(3) a manufacturer of materials or component parts, used in the fabrication of a dental prosthetic appliance and for sale or use by a dental laboratory, that are not directly fitted to a dental model or cast of the human teeth, gums, jaws, or alveolar process.

The provisions of this §116.2 adopted to be effective May 10, 2004, 29 TexReg 4484.

§116.3. Registration and Renewal.

(a) A dental laboratory shall be registered according to the provisions of Occupations Code, Subchapter D, §§266.151 - 266.154.

(b) The Dental Laboratory Certification Council (DLCC) shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of Occupations Code, Chapter 266. Applications will be forwarded with a recommendation to the Board for registration if the requirements of Occupations Code, Chapter 266 and this chapter are met, and the following materials are submitted:

(1) A complete application or renewal, with all required information;

(2) proof of compliance with §116.6 of this chapter;

(3) the appropriate fee; and,

(4) effective January 1, 2009, for initial registrations only and once every three years for registration renewals, proof of completion of the Texas Jurisprudence Assessment for dental laboratories.

(c) It shall be the duty of each laboratory owner or manager to notify the Board in writing within 60 days of:

(1) a change in ownership or management of the laboratory;

(2) a change in location of the laboratory;

(3) closure of the laboratory;

(4) a change of designated CDT, in which case the notice must be accompanied by proof of current CDT certification for the replacement CDT;

(5) a change of designated employee, if the laboratory is exempted under §116.5 of this chapter. A change of designated employee will require proof within six (6) months of the change that the designated employee meets continuing education requirements; or

(6) a change in mailing address for the owner or manager of the laboratory.

(d) Any laboratory owner applying for a new laboratory registration who has pending fees and/or penalties due from a previous laboratory registration when such laboratory was closed for non-compliance with subsection (c) of this section must first remit to the Board any fees and penalties due on that previous registration before the new registration application will be considered by the DLCC.

(e) An initial registration certificate issued under this chapter on or after September 1, 2009 expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.

The provisions of this §116.3 adopted to be effective May 10, 2004, 29 TexReg 4484; amended to be effective February 26, 2009, 34 TexReg 1246;

amended to be effective February 3, 2010, 35 TexReg 642.

§116.4. Requirements.

(a) The following procedures, performed in relation to permitted dental laboratory services described in Occupations Code, §266.001, and pursuant to a written prescription from a licensed dentist, may be undertaken by a registered dental laboratory:

(1) Shade taking. Dental laboratories providing this service shall institute and maintain infection control procedures for in-laboratory shade verification to protect the patient and laboratory staff from infectious contamination. Each laboratory shall:

(A) Dedicate a specific area of the laboratory for performance of shade verification procedures.

(B) Maintain the area used for shade verification in a neat, clean, and clutter-free state at all times.

(C) Disinfect areas of patient contact both before and after each patient.

(D) Provide a dedicated set of shade guides to be used only for patient shade verification, and disinfect shade guides before and after each use.

(E) Provide a patient hand mirror for extraoral use, and disinfect the mirror before and after each patient's use.

(F) Use a disinfecting agent for cleaning shade guides that are accidentally dropped.

(G) Require that the technicians taking the shade wear protective clothing, including gloves.

(2) Computer imaging pertaining to the oral cavity by a registered laboratory. Computer imaging may be performed only when authorized by a written prescription from a licensed dentist. The result should be furnished to that dentist, accompanied by a disclaimer to the patient that computer imaging is an artistic interpretation and does not guarantee exact results.

(b) A dental laboratory shall furnish each licensed dentist from whom prescriptions are accepted with its permanent registration number and the expiration date of such registration, and shall maintain for a period of two years any work orders of any laboratory with which it contracts services. Each work order shall reflect the Texas registration number and registration expiration date of the contracted laboratory.

(c) No work may be outsourced, except to a dental laboratory registered under this chapter.

(d) A person owning or operating a laboratory in the State of Texas must maintain the entire laboratory in a clean and sanitary condition without any accumulation of trash, debris, or filth, and such premises shall be maintained in full compliance with all health requirements of the city or county, or both, in

which such a laboratory is located and in conformity with the health laws of the State of Texas.

The provisions of this §116.4 adopted to be effective May 10, 2004, 29 TexReg 4484.

§116.5. Certified Dental Technician Required.

(a) All dental laboratories must have a certified dental technician employed by and working on the premises of the dental laboratory a minimum of 30 hours per week.

(b) A dental laboratory is exempt from subsection (a) of this section if the laboratory is:

(1) owned by a licensed dentist engaged in the practice of dentistry in this state or by a professional corporation or partnership in which that dentist is an officer, partner, or employee; and

(2) located on the premises within which the dentist practices dentistry.

(c) The exemption under subsection (b) of this section does not apply to a dental laboratory if the laboratory employs three or more dental technicians.

(d) A dental laboratory is exempt from subsection (a) of this section if:

(1) the dental laboratory was registered with the Board on September 1, 1987;

(2) the dental laboratory's registration has been renewed each year and all registration fees have been paid;

(3) the beneficial ownership of at least 51% interest in the laboratory has not transferred; and

(4) the owner and/or the designated employee of the dental laboratory is employed on the premises of the laboratory for at least 30 hours per week.

(e) The owner of the dental laboratory shall maintain employment records validating compliance with this section for a period of not less than two years.

The provisions of this §116.5 adopted to be effective May 10, 2004, 29 TexReg 4484; amended to be effective November 5, 2006, 31 TexReg 8835.

§116.6. Continuing Education.

(a) A dental laboratory renewing a certificate must provide proof that the designated CDT has met the continuing education requirements of a recognized board of certification for dental technology, or its successor.

(b) A dental laboratory that meets the exemption qualifications in §116.5 of this chapter must provide, in lieu of the requirement of subsection (a) of this section, proof, that the designated employee has completed at least 12 hours of continuing education during the preceding 12-month period. Continuing education hours may only be used for one renewal period.

(c) Acceptable continuing education shall be comprised of business management, infection control, and technical competency courses presented in

seminars or clinics as accepted by a recognized organization of dentistry or dental technology, subject to the following requirements:

(1) The designated employee must complete at least one course in regulatory compliance annually. Examples include courses in Infection Control, Occupational Safety and Health Administration (OSHA), Federal Drug Administration (FDA), Texas Jurisprudence, Cardiopulmonary Resuscitation (CPR) or Ethics.

(2) No more than one course in business management may be applied toward the annual continuing education requirement.

(3) Self-study in a course approved by a recognized organization of dentistry or dental technology may be taken for not more than four hours of the annual continuing education requirement.

(d) In lieu of furnishing proof of continuing education as set forth in subsection (c) of this section, a dental laboratory may furnish proof that the designated dental technician has a current certification from a recognized board of certification for dental technology or its successor. Certification as "retired" does not qualify the technician.

The provisions of this §116.6 adopted to be effective May 10, 2004, 29 TexReg 4484; amended to be effective February 26, 2009, 34 TexReg 1246.

§116.10. Prosthetic Identification.

(a) It shall be the duty of the licensed dentist to insure that all removable prosthetic devices or removable orthodontic appliances delivered to a patient under his or her care bear a permanent identification marking suitable to determine that the prosthetic device or removable orthodontic appliance belongs to that patient.

(b) A suitable marking shall be defined as one that includes the patient's last name and first initial, and/or social security number. This marking shall be placed in the denture base of the removable prosthetic device or acrylic portion of the removable orthodontic appliance in such a manner as not to compromise the aesthetics of the restoration.

(c) The licensed dentist shall install this identification marking or shall request on the prescription to a registered dental laboratory that the laboratory place the identification marking in the removable prosthetic device or removable orthodontic appliance.

(d) Nothing in this rule shall preclude a dental laboratory from charging a fee for this service.

(e) This rule shall not apply to any removable prosthetic device or removable orthodontic appliance that contains no acrylic, vinyl or plastic denture base, or if said appliance is too small to reasonably accomplish this procedure.

(f) A dental laboratory that is required to register with the State Board of Dental Examiners shall clearly label or certify in writing to the prescribing dentist that the prosthesis or appliance being delivered to the prescribing dentist was either:

(1) manufactured entirely by the SBDE registered dental laboratory;

(2) manufactured in part or whole by a domestic laboratory inside of the United States; or,

(3) manufactured in part or whole by a foreign laboratory outside of the United States and clearly identify the country in which the dental laboratory work was performed.

(g) A dental laboratory that is required to register with the State Board of Dental Examiners may return to the dentist who issued the prescription written certification of all materials utilized in the prosthesis or appliance, including the percentage of each ingredient used in the fabrication of the prosthesis or appliance.

The provisions of this §116.10 adopted to be effective May 26, 2005, 30 TexReg 3020; amended to be effective February 26, 2009, 34 TexReg 1247; amended to be effective December 22, 2010, 35 TexReg 11257.

§116.20. Responsibility.

(a) Each owner and manager named in an application to register a dental laboratory, irrespective of the person signing the application, is responsible for the proper registration and operation of the laboratory pursuant to the Dental Practice Act and these rules.

(b) For the purposes of this section, "owner" includes a person who has at least a 20 percent ownership interest in a dental laboratory that is registered under this chapter or for which an application for registration has been filed.

(c) The provisions of Occupations Code, Chapter 266, providing that persons violating the Dental Practice Act are subject to criminal penalties and subject to loss of registration or refusal by the board to issue a registration, apply to the owner and manager of any dental laboratory having or seeking registration in Texas.

The provisions of this §116.20 adopted to be effective May 10, 2004, 29 TexReg 4484.

CHAPTER 117. FACULTY AND STUDENTS IN ACCREDITED DENTAL SCHOOLS

§117.1. Exemptions.

(a) The definition of dentistry as contained in the Occupations Code, Title 3, Chapter 251.003, shall not apply to the following:

(1) Students of a reputable dental college or school who are candidates for a degree and who perform their operations without pay except for actual costs of materials, in the presence of an under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college or school approved by the State Board of Dental Examiners, or for an on behalf of and in a school, hospital, state institution, public health clinic, or other facility approved for student dental services by the State Board of Dental Examiners.

(2) Students of a reputable dental hygiene college or school who are candidates for a degree who practice dental hygiene without pay in strict conformity with the laws of this state regulating the practice of dental hygiene under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental hygiene college or school approved by the State Board of Dental Examiners, or for and on behalf of and in a school, hospital, state institution, public health clinic, or other facility approved for student dental hygiene services by the State Board of Dental Examiners.

(3) Dental interns who pursue advanced education in dentistry under the auspices of an institution, such as a dental school or hospital, which offers the type of advanced program designed to meet accreditation requirements as established by the Commission on Dental Accreditation of the American Dental Association. Dental interns may perform any clinical service included in the program of advanced education for which he/she is enrolled, as long as such service is accomplished under the auspices of the sponsoring institution, and as authorized by the program supervisor. A dental intern not licensed in Texas may not assess fees for clinical services rendered. An unlicensed dental intern may not engage in private practice.

(4) Dental residents who pursue advanced education in dentistry under the auspices of an institution, such as a dental school or hospital, which offers the type of advanced program designed to meet accreditation requirements as established by the Commission of Dental Accreditation of the American Dental Association. The residency program usually follows an internship and the objective customarily is to prepare specialists in selected field of clinical dentistry. Dental residents may perform any clinical service included in the program of advanced education for which he/she is enrolled, as long as such service is

accomplished under the auspices of the sponsoring institution, and as authorized by the program supervisor. A dental resident not licensed in Texas may not assess fees for clinical services rendered. An unlicensed dental resident may not engage in private practice.

(b) Dental interns and residents shall be entitled to apply for and to receive an identification number issued by the SBDE to be used solely for the purpose of applying for a Controlled Substances narcotics registration from the Texas Department of Public Safety and the Drug Enforcement Administration to prescribe, administer, or dispense controlled substances.

(c) The SBDE will notify the Texas Department of Public Safety and the Drug Enforcement Administration when an identification number is issued and when an identification number is voided.

(d) Each application for an SBDE identification number shall be accompanied by a fee in an amount set by the Board.

The provisions of this §117.1 adopted to be effective January 1, 1976; amended to be effective February 6, 1977, 2 TexReg 251; amended to be effective March 18, 1997, 22 TexReg 2500; amended to be effective December 3, 1997, 22 TexReg 11680; amended to be effective February 24, 2004, 29 TexReg 1661.

§117.2. Dental Faculty Licensure.

(a) Effective March 1, 2004, the SBDE will issue a license to a dental school faculty member that provides direct patient care, upon payment of a fee in an amount set by the Board, who meets all the following criteria:

(1) has graduated from a dental school;

(2) holds a full-time or part-time salaried faculty position at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;

(3) obtains endorsement of the application from the Dean, Department Chair, or Program Director of the employer-school;

(4) pays an application fee set by the Board; and

(5) has taken and passed the jurisprudence examination administered by the SBDE or its designated testing service.

(b) An applicant for a license under this chapter must file an application for the license within six months of employment date.

(c) A license under this chapter must be renewed annually.

(d) A license issued under this chapter expires on the termination of employment with the dental or dental hygiene school.

(e) A license holder whose employment with a dental or dental hygiene school terminates and who is

subsequently employed by the same or different dental or dental hygiene school must comply with requirements for obtaining an original license, except that the person is not required to re-take the jurisprudence exam.

(f) A license issued under this chapter does not authorize the license holder to engage in the practice of dentistry or dental hygiene outside the auspices of the employing dental or dental hygiene school or program.

The provisions of this §117.2 adopted to be effective February 24, 2004, 29 TexReg 1661.

§117.3. Dental Hygiene Faculty Licensure.

(a) Effective March 1, 2004, the SBDE will issue a license to a dental hygiene school faculty member that provides direct patient care, upon payment of a fee in an amount set by the Board, who meets all the following criteria:

(1) has graduated from a dental hygiene school;

(2) holds a full-time or part-time salaried faculty position at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;

(3) obtains endorsement of the application from the Dean, Department Chair, or Program Director of the employer-school;

(4) pays an application fee set by the Board; and

(5) has taken and passed the jurisprudence examination administered by the SBDE or its designated testing service.

(b) An applicant for a license under this chapter must file an application for the license within six months of employment date.

(c) A license under this chapter must be renewed annually

(d) A license issued under this chapter expires on the termination of employment with the dental or dental hygiene school

(e) A license holder whose employment with a dental or dental hygiene school terminates and who is subsequently employed by the same or different dental or dental hygiene school must comply with requirements for obtaining an original license, except that the person is not required to re-take the jurisprudence exam.

(f) A license issued under this chapter does not authorize the license holder to engage in the practice of dentistry or dental hygiene outside the auspices of the employing dental or dental hygiene school or program.

The provisions of this §117.3 adopted to be effective February 24, 2004, 29 TexReg 1662.

CHAPTER 119. SPECIAL AREAS OF DENTAL PRACTICE

§119.1. Dental Public Health. Dental public health is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

The provisions of this §119.1 adopted to be effective January 1, 1976.

§119.2. Endodontics. Endodontics is the branch of dentistry which is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp and associated periradicular conditions.

The provisions of this §119.2 adopted to be effective January 1, 1976; amended to be effective September 6, 1991, 16 TexReg 4622.

§119.3. Oral and Maxillofacial Pathology. Oral and maxillofacial pathology is that branch of science which deals with the nature of the diseases affecting the oral and adjacent regions, through study of its causes, its processes and its effects, together with the associated alterations of oral structure and function. The practice of oral and maxillofacial pathology shall include the development and application of this knowledge through the use of clinical, microscopic, radiographic, biochemical or other laboratory examinations or procedures as may be required to establish a diagnosis and/or gain other information necessary to maintain the health of the patient, or to correct the result of structural or functional changes produced by alterations from the normal.

The provisions of this §119.3 adopted to be effective January 1, 1976; amended to be effective September 6, 1991, 16 TexReg 4622; amended to be effective March 18, 1997, 22 TexReg 2501.

§119.4. Oral and Maxillofacial Surgery. Oral and maxillofacial surgery is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial regions.

The provisions of this §119.4 adopted to be effective January 1, 1976; amended to be effective September 6, 1991, 16 TexReg 4622.

§119.5. Orthodontics and Dentofacial Orthopedics. Orthodontics and Dentofacial Orthopedics is that area of dentistry concerned with the supervision, guidance and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontics and dentofacial orthopedics practice include the diagnosis, prevention, interception and treatment of all forms of malocclusion of the teeth and associated alterations in their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiologic and esthetic harmony among facial and cranial structures.

The provisions of this §119.5 adopted to be effective January 1, 1976; amended to be effective September 6, 1991, 16 TexReg 4622; amended to be effective March 1, 1996, 21 TexReg 1425.

§119.6. Pediatric Dentistry. Pediatric dentistry is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

The provisions of this §119.6 adopted to be effective January 1, 1976; amended to be effective June 8, 1988, 13 TexReg 2613; amended to be effective September 6, 1991, 16 TexReg 4622; amended to be effective April 17, 2001, 26 TexReg 2843.

§119.7. Periodontics. Periodontics is that specialty of dentistry which encompasses the prevention diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health function and esthetics of these structures and tissues.

The provisions of this §119.7 adopted to be effective January 1, 1976; amended to be effective September 6, 1991, 16 TexReg 4622; amended to be effective April 17, 2001, 26 TexReg 2844.

§119.8. Prosthodontics. Prosthodontics is that branch of dentistry pertaining to the restoration and maintenance of oral functions, comfort, appearance, and health of the patient by the restoration of natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissues with artificial substitutes.

The provisions of this §119.8 adopted to be effective January 1, 1976; amended to be effective September 6, 1991, 16 TexReg 4622.

§119.9. Oral and Maxillofacial Radiology. Oral and Maxillofacial Radiology is that specialty of dentistry that discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

The provisions of this §119.9 adopted to be effective October 7, 2009, 34 TexReg 6853.

**CHAPTER 125. APPLICATIONS FOR SPECIAL
CONSIDERATION OR EXCEPTION TO BOARD
RULES**

§125.1. Board to Rule on Requests for Exceptions to Rules. Any person under the jurisdiction of the State Board of Dental Examiners may request the Board to consider and approve an exception to Board rules. The request will be considered at a regularly scheduled board meeting following receipt of a written request for appearance. The Board will not consider a request for exception from any party to a contested case or from a respondent in a pending complaint investigation.

The provisions of this §125.1 adopted to be effective January 1, 1976; amended to be effective April 17, 2001, 26 TexReg 2844.